La Cinquieme PART DES REPORTS DEL S[r]. EDW. COKE Chivalier, Lattorney General le Roy,

DES

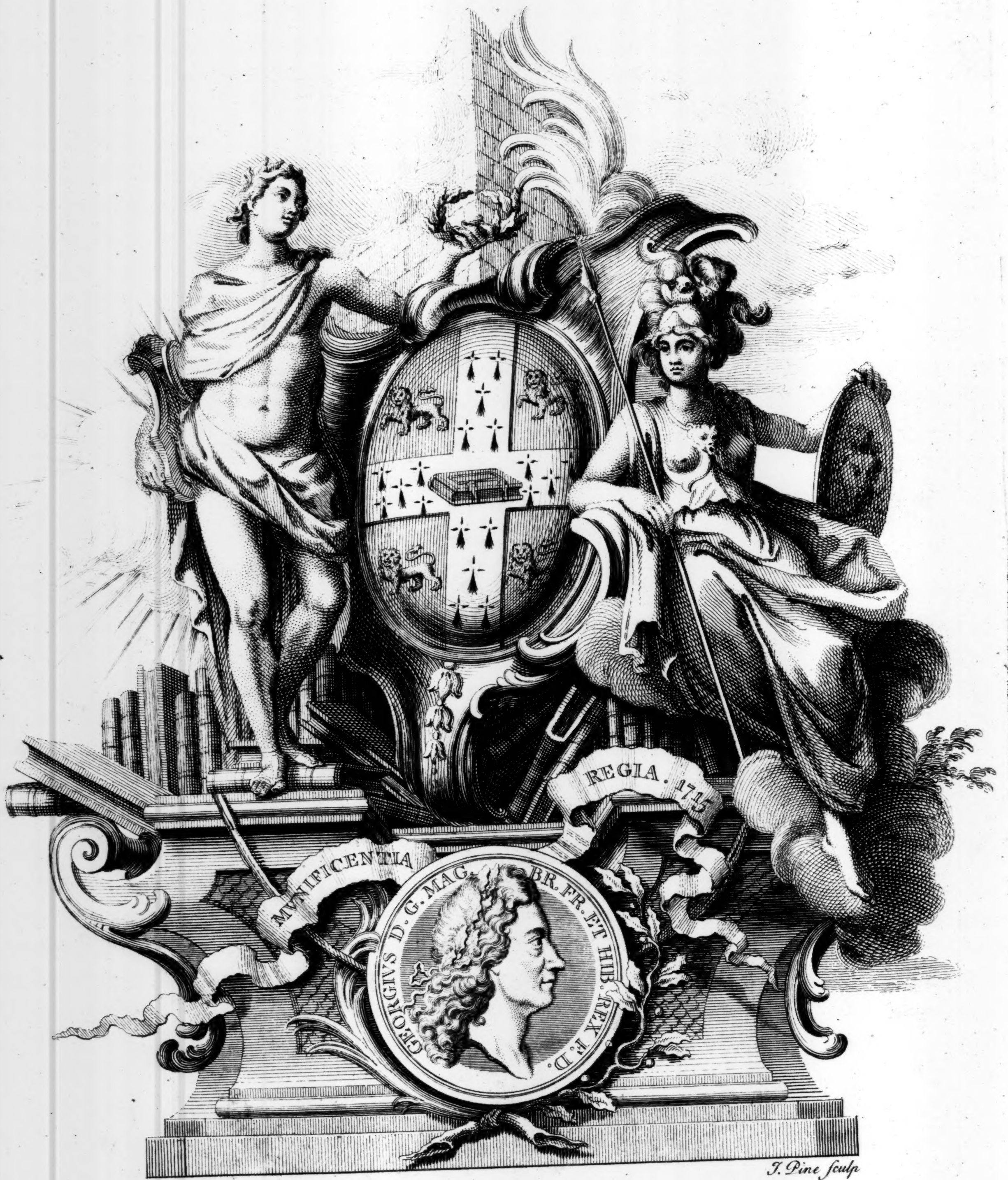
Divers Resolutions & Judgments dones sur solemne Arguments, & avec grand deliberation & conference des tres-reverend Judges & Sages de la Ley, de Cases en Ley queux ne fueront unques resolve ou adjudges par devant: Et les Raisons & Causes des dits Resolutions & Judgments.

Publie en le tierce An de treshaut & tres-illustre JAQUES Roy Dengleterre, France & Ireland, & de Escosse le 39, le Fountain de tout Pietie & Justice, & la vie de la Ley.

Avec References al touts Liures del Common Ley, *cybien Ancient come Modern.*

Quid enim laboro, nisi ut veritas in omni quæstione explicetur? Verum dicentibus facile cedam. Tull. Tusc. quæst. lib. 3.

LONDON,
Printed by the Assigns of *Rich.* and *Edw. Atkins* Esquires; for **Samuel Keble** at the *Turks-Head* in *Fleet-street*, and **John Walthoe**, in *Vine-Court, Middle-Temple*, 1697.


MUNIFICENTIA
REGIA. 1715
GEORGIVS D. G. MAG. BR. FR. ET HIB. REX F. D.
J. Pine sculp

Part V.

TO THE

READER.

VEre dicitur (*Candide Lector*,) *quod* Error (*cui* Ignorantia *gemella est individua*) *in progressu adeo infinite se multiplicat, tam prodigiosas & novas Chimæras procreat, tanta & tam multiplici incertitudine fluctuat, & ejusmodi venenum ex virulento* Ignorantiæ *habitu imbibit, ut singulos quibus aliquid sui venenati halitus infundit, pestifera contagione inficiat seu contaminet*; *Quodque mirandum est, priusquam ad terminum perveniat, ad miserum & immaturum exitum (nisi prævertatur) confusione quadam abripit*; Naturalia & vera artificialia sunt finita, nullus terminus falso, *Error* immensus. *Contra vero,* Veritas *sustentari & oppugnari nisi ipsa veritate minime potest, & ea est ejus natura & constantia, ut nullo tempore nulla parte sibi a se dissentiat*; *mangonio & phaleris exornari odit, comitesque secum ducit* Unitatem, Simplicitatem *&* Pacem *tandem*; Putida salsamenta amant origanum, *Veritas* per se placet, honesta per se decent, falsa fucis, turpia phaleris indigent. *Tantum abest, ut* Ignorantia *excuset aut extenuet ejus errorem qui*

IT is truly said (good Reader) that *Error* (*Ignorance* being her inseparable Twin) doth in her proceeding so infinitely multiply her self, produceth such monstrous and strange Chimæra's, floateth in such and so many incertainties, and sucketh down such poison from the contagious Breath of Ignorance, as all such into whom she infuseth any of her poysoned Breath, she dangerously infects or intoxicates; And that which is wonderful, before she can come to any end, she bringeth all things (if she be not prevented) by confusion to a miserable and untimely end; *Naturalia & vera artificialia sunt finita, nullus terminus falso,* Error *immensus*. On the other side, Truth cannot be supported or defended by any thing but by Truth her self, and is of that constitution and constancy, as she cannot at any time or in any part or point be disagreeable to her self; she hateth all bombasting and sophistication, and bringeth with her *Certainty*, *Unity*, *Simplicity* and *Peace* at the last; *Putida salsamenta amant origanum*, Veritas *per se placet, honesta per se decent, salsa fucis, turpia phaleris indigent*. Ignorance is so far from excusing or extenuating the error of him that had power to

Pref. to *Parson's* Answer.

find out the Truth (which necessarily he ought to know) and wanted only Will to seek it, as she will be a just cause of his great punishment; *Quod scire debes & non vis, non pro ignorantia sed pro contemptu haberi debet.* Error and Falshood are of that condition, as without any resistance they will in time of themselves fade and fall away: But such is the state of Truth, that though many do impugne her, yet will she of her self ever prevail in the end, and flourish like the Palm Tree; She may peradventure by force for a time be troden down, but never by any means whatsoever can she be troden out. There is no Subject of this Realm, but being truly instructed by good and plain evidence of his ancient and undoubted Patrimony and Birth-right, (though he hath for some time by ignorance, false persuasion, or vain fear, been deceived or dispossessed) but will consult with learned and faithful Counsellors for the recovery of the same: The ancient and excellent Laws of *England* are the Birth-right and the most ancient and best inheritance that the Subjects of this Realm have, for by them he injoyeth not only his Inheritance and Goods in peace and quietness, but his Life and his most dear Country in safety; And for that I fear that many of my dear Country-men, (and most of them of great Capacity and excellent parts,) for want of understanding of their own evidence, do want the true knowledge of their ancient Birth-right in some points of greatest importance, I have in the beginning of this my fifth Work, directed them to those that will not only faithfully counsel and fully resolve them therein, such as cannot be daunted with any fear,

Veritatem *invenire poterat (quam necessario agnoscere debeat,) & tantum investigare noluit, ut in causa sit cur gravius plectatur;* Quod scire debes & non vis, non pro ignorantia sed pro contemptu haberi debet. *Erroris & falsitatis ea est natura, ut nemine repugnante sensim per se dilabuntur & evanescent: Ea autem veritatis natura, ut quamvis plurimi oppugnent, ipsa tamen demum vincat, & ut Palma effloresca; Ad tempus forsitan vi quadam prematur, sed nullo tempore ulla ratione opprimatur. Nullus est hujus Reipublicæ Civis, qui illustribus documentis & perspicuis indiciis de suo patrimonio & jure avito & certissimo vere edoctus (quamvis aliquantisper ignorantia, falsa persuasione, aut inani timore deceptus fuerit, & possessione deturbatus,) sed Juris Prudentes ad eam recuperandam consulet: Antiquæ & præcellentes* Angliæ *Leges, sunt avita Jura & antiquissima optimaque hæreditas quæ Cives hujus Regni habent; Per illas etenim non solum hæreditate & bonis in pace & tranquillitate, sed etiam vita & patria charissima secure gaudent; Cum autem male metuo ne ex charissimis concivibus permulti (& ex illis quamplurimi præstanti ingenio, singulari solertia, & eximiis animi dotibus,) quia illustria quæ habent indicia minus intelligunt, jus etiam avitum in nonnullis maximi momenti rebus minus vere cognoscant, in primo limine hujus Quinti Operis mei, illos direxi & quasi manu duxi, ad eos qui non tantum sano consilio aderunt, & cumulate*

satisfacient

ſatisfacient (nec enim vel timore frangi, vel affectione moveri, vel præmio corrumpi poſſunt,) verumetiam in tranquilla & juſta poſſeſſione ſtabilent & confirmabunt: Errorem ex animo ſolidis argumentis extorquere intellectus eſt acerrimi, animi integri, viriſque probis, ſobriis, & ſanis non eſt inſolens. Hoc iis propoſitum eſſet qui de re aliqua ſcribunt, quæ inter alios controvertitur quia non ſunt informati, ut omni quo poſſunt candore & charitate ſtudioſum Lectorem certiſſimis argumentis perſuadeant & edoceant, Sed ut nunc ſunt tempora, qui de ejuſmodi rebus ſcribunt animi impetu abrepti, acerbis & contumelioſis convitiis aut novas controverſias ſuſcitant, aut quantum in illis eſt priores reddunt immortales: Certo certius eſt nonnullos id generis libros quibus veritas ipſa centrum fuerat, nihilominus quia in peripheria temperantia, modeſtia, & urbanitas non aderant, in veritatis præjudicium adverſarios in erroribus obfirmaſſe ſuis; & conviciis amarulentis non ſolum exacuerunt eos ut ſeipſos defenderent, & defendendo ſimiliter impingerent, verumetiam ſæpenumero (inde ad ſcribendum adacti) errorem ipſum in multorum fraudem propugnarent, qui alias nemine contradicente in auras abiiſſet. Qui contra conſcientiam veritatem cognitam oppugnat, id facit aut ſui ipſius aut aliorum gratia; ſui ipſius, eo quod animo ſit male contento; aliorum, quibus ob aliam rationem placere ſtudet: Male ille contentus, quia quo ambitioſa & injuſta cupiditas traxit non pervenerit, aut quia in luce Reipublicæ, ob pravitatem vel flagitia

moved by any affection, nor corrupted with any reward,) but alſo eſtabliſh and ſettle them in quiet and lawful poſſeſſion: Upon juſt grounds to rectifie an Error in a Mans own mind is a work of a clear underſtanding, and of a reformed Will, and frequent with ſuch as be good Men, and have ſober and ſetled Wits. The end of ſuch as write concerning any matter, which by ſome for want of inſtruction is called into controverſie, ſhould be with all the candor and Charity that can be uſed, to perſuade and reſolve by demonſtrative proofs the diligent Reader in the truth. But now a days, thoſe that write of ſuch matters do for the moſt part by their bitter and uncharitable invectives, tranſported with paſſion and fury, either beget new controverſies, or do aſmuch as in them lie to make the former immortal: Certain it is that ſome Books of that Argument, that have had Truth for their center, yet becauſe they have wanted Temperance, Modeſty and Urbanity for their circumference, have to the great prejudice of the Truth hardned the Adverſary in their Errors; and by their bitter invectives, whetted them not only to defend themſelves, and to offend in the like, but many times (being thereby urged to write) to defend the Error it ſelf to the hurt of many, which otherwiſe might have vaniſhed away without any contradiction. He that againſt his Conſcience doth impugn a known Truth, doth it either in reſpect of himſelf, or of others; of himſelf, in that he hath within him a diſcontented heart; of others, whom for certain worldly reſpects he ſeeketh to pleaſe. Diſcontented he is, either becauſe he hath not attained to his ambitious and unjuſt deſires, or for that in the Eye

of the State, he for his Vices or Wickedneſs hath juſtly deſerved puniſhment and diſgrace, and therefore doth oppoſe himſelf againſt the current of the preſent to pleaſe others, in reſpect that his Credit or Maintenance dependeth upon their Favour or Benevolence. I know that at this day all Kingdoms and States are governed by Laws, and that the particular and approved Cuſtom of every Nation, is the moſt uſual binding and aſſured Law; I deal only with the Municipal Laws of *England*, which I profeſs, and whereof I have been a Student above theſe 35 years: My only end and deſire is, that ſuch as are deſirous to ſee and know (as who will not deſire to ſee and know his own?) may be inſtructed, ſuch as have been taught amiſs (every Man believing as he hath been taught,) may ſee and ſatisfie himſelf with the Truth, and ſuch as know and hold the Truth, (by having ſo ready and eaſie a way to the Fountains themſelves) may be comforted and confirmed.

pœnam merito ſubierit, aut gratia exciderit, ac igitur tempori adverſo æſtu obluctatur ut aliis placeret, eo quod ex eorum favore & benevolentia, ejus æſtimatio & victus dependet. Non me latet, quod hoc tempore omnia Regna & Reſpublicæ Legibus adminiſtrantur, quodque ſua cujuſque Nationis peculiaris & approbata conſuetudo uſitatiſſimum eſt vinculum, & Lex firmiſſima; Mihi res eſt cum Municipalibus Angliæ *Legibus quas profiteor, & quibus jam triginta quinque annos invigilavi: Hoc mihi ſolummodo propoſitum, & in votis eſt, ut qui expectant perſpicere & cognoſcere, (Quis enim quæ ſua ſunt videre & cognoſcere non expetit?) edoceantur, qui male fuerint edocti, (Quiſque enim credit ut eſt edoctus,) veritatem perſpiciant & in ea acquieſcant, qui autem veritatem perſpiciunt & tuentur, (cum tam facilis via ad ipſos fontes pateat) cum ſolatio confirmentur.*

Farewell.

Vale.

Parſon's Anſwer, fol. 19.

Multa ignoramus quæ non laterent, ſi Veterum Lectio nobis eſſet familiaris. *Macrob. Lib. 6. Satur.*

Caſuum

Part V.

Casuum istius Libri Series, Continen' in qua Curia act', & quando recordat' fuer': Et in quo Folio hujus Libri incipiunt.

Cases

Cases

In Annis, in quibus Casus isti adjudicati erant, hi fuerunt Justiciarii.

Justic' de Banco Regis.

CHristopherus Wray Miles, qui obiit Anno 34 Eliz. Et post eum Johannes Popham Miles.

Johannes Southcote.
Thomas Gawdy Miles.
Willielmus Ayloffe.
Robertus Shute.
Johannes Clench.
Franciscus Gawdy Miles.
Edwardus Fenner Miles.
Christopherus Yelverton Miles.
David Williams Miles.

Justic' de Communi Banco.

JAcobus Dyer Miles, qui obiit post Hill. 24 Eliz.
Et Pasch. 24. Edmundus Anderson Miles,
Anno 19 Eliz. Rogerus Manwood, qui recessit in Scacc Hill. 24 Eliz.
Robertus Munson, cessit Pasch. 22.
Hill. 20 Eliz. Thomas Mead, obiit Pasch. 27 Eliz.
Trin. 21 Eliz. Franciscus Wyndham, obiit post Trin. 34 Eliz.
Hill. 23 Eliz. Willielmus Peryam, Hill. 35. recessit in Scaccario.
Mich. 27 & 28 Eliz. Franciscus Rodes, obiit anno 31 Eliz.
Pasch. 31 Eliz. Thomas Walmesly Miles.
Hill. 35 Eliz. Franciscus Beamont, obiit ante Pasch. 40 Eliz.
Hill. 36 Eliz. Thomas Owen, obiit ante Hill. 41 Eliz.
Trin. 40 Eliz. Johannes Glanvil, obiit post Trin. 42 Eliz.
Hill. 41 Eliz. Georgius Kingesmil Miles.
Mich. 43 Eliz. Petrus Warberton Miles.
Hill. 1 Jac. Reg. Willielmus Daniel Miles.

Baron'

Baron' in Scaccario.

JOhannes Jeffrey Miles.
Thomas Fleming Miles.
Robertus Shute.
Johannes Clench.
Edwardus Flowerdew.
Robertus Clark Miles.
Thomas Gent.
Matheus Evans.
Johannes Savil Miles.
Georgius Snig Miles.
Johannes Sotherton.

Servientes ad Legem.

RObertus Gardiner Miles.
Thomas Harris Miles.
Richardus Lewkenor Miles.
Johannes Hele Miles.
Edwardus Herne Miles.
Edmundus Pelham Miles.
Edwardus Philips Miles.
Johannes Crook Miles.
Johannes Sherley.
Thomas Coventry.
Edwardus Houghton.
Laurentius Tanfield Miles.
Thomas Foster Miles.
Thomas Harris.
Jacobus Altham.
Henricus Hubberd Miles.
Augustinus Nichols.
Robertus Barker.
Richardus Hutton.
Jacobus Lea Miles.
Johannes Dodderidge.

Mich.

De Jure Regis Ecclesiastico.

Casus Caudrey

TErmino Hillarii, anno 33 Regni Elizabethæ Rotulo 340. *Robert' Caudrey* Clericus in jus vocavit *George Atton* de actione transgressionis, quod Clausum suum ad Northluffenham in Comit Rutlandiæ perfregit die septimo Augusti, anno Regni prædictæ Reginæ tricesimo primo: Defendens respondit se minime esse reum; Juratores evocati & jurati, veredictum dederunt speciale, videlicet rem esse veram compererunt, de jure autem ad judicium Curiæ referentes in hanc sententiam; Compererunt Querentem ante transgressionem fuisse Rectorem Rectoriæ de Southluffenham in Comitatu prædicto, & locum in quo damnum fuit illatum, esse partem ejusdem Rectoriæ, compererunt item statutum factum anno ejusdem Reginæ primo, quo sancitum in hanc sententiã fuit; Quod ea Ecclesiastica jurisdictio, q̃ aliqua potestate spirituali, vel

Of the Kings Ecclesiastical Laws.

IN the Term of St. Hillary, in the three and thirtieth year of the Reign of Queen Elizabeth, Rotulo 340. Robert Caudrey Clerk brought an Action of Trespass against George Atton, for breaking of his Close at Northluffenham in the County of Rutland, the seventh day of August, in the one and thirtieth year of the Reign of the said late Queen; The Defendant pleaded Not Guilty, and the Jury returned and sworn for Trial of this Issue, gave a special Verdict, that is, they found the truth of the Case at large, referring the same for the Law to the Judgment of the Court, to this effect: They found that the Plaintiff before the Trespass supposed to be done, was Parson of the Rectory of Southluffenham in the County aforesaid, whereof the place wherein the Trespass is alledged was parcel, and found the Statute made in the (a) first year of the said late Queens Reign, by which in effect it is enacted; That such Jurisdiction Ecclesiastical, as by any Spiritual or Ecclesiastical

Poph. 59. 3 Inst 198. Moor 228. *Caudrey's* Case.

(a) 1 Eliz. c. 1. 16 & 17 Car. c. 11. Cawly 1, 2, 3, &c. 4 Inst. 324, 325. Cr. Jac. 37. Moor 755. Parsons Answer 57.

stical Power hath heretofore been, or may lawfully be exercised for the Visitation of the Ecclesiastical Estate, and Persons, and for Reformation, Order and Correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities within this Realm, should for ever be united and annexed to the Imperial Crown of this Realm. And that her Highness, her Heirs and Successors, should have full power and authority by virtue of that Act, by Letters Patents under the Great Seal of England, to assign nominate and authorise such Persons, being natural born Subjects, as her Highness her Heirs or Successors should think meet, to exercise and execute under her Highness her Heirs and Successors, all and all manner of Jurisdiction, Priviledges and Preheminences, in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction within this Realm of England and Ireland, and to visit, reform, redress, order, correct and amend all such Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities whatsoever, which by any manner Spiritual or Ecclesiastical Power, Authority or Jurisdiction can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended, to

Ecclesiastica jam antea exercebatur, vel legitime exerceri poterat ad visitandum Ecclesiasticum statum & ordinem, item ad reformandum, in ordinem redigendum, & corrigendum homines Ecclesiasticos, omnimodos errores, hæreses, schismata, abusus, offensas, & enormitates, intra hoc Regnum imperiali hujus Regni Diademeti in perpetuum uniretur, & adjungeretur. Et quod ejusdem Reginæ celsitudo, hæredes, & successores, virtute hujus Statuti, plenam potestatem & auctoritatem haberent, p Literas Patentes sub magno Angliæ Sigillo, assignandi, nominandi, & authoritate muniendi ejusmodi personas, nativos hujus Regni subditos, quos sua celsitudo, hæredes & successores idoneos existimarent, ad exercendum & exequendum sub sua celsitudine, hæredibus & successoribus, omnimodã jurisdictionẽ, privilegia, præheminentias, ullo modo spectantes ad jurisdictionem spiritualẽ vel Ecclesiasticã, infra hoc Regnum Angliæ & Hiberniæ, & ad visitandum, reformandũ, componendum, corrigendũ, & emendandum, omnes ejusmodi errores, hæreses, schismata, abusus, offensas, contemptus, & enormitates quascunq; quæ ulla potestate spirituali vel Ecclesiastica potestate,

state, authoritate, aut jurisdictione legitime reformari, cõponi, corrigi, coerceri, vel emendari possint, ad omnipotentis Dei beneplacitum, virtutis incremẽtum & pacis unitatisq; hujus Regni conservationem. Et quod etiam ejusmodi ꝑsonæ ita nominatæ, assignatæ & authoritate munitæ, virtute Statuti & ejusmodi literarũ Patentium plenam potestatẽ & authoritatẽ haberent sub sua Celsitudine, hæredibus, & successoribus ad omnia præmissa exercenda, utenda, & exequẽda juxta tenorẽ prædictarũ literarũ Patentium, ulla re, vel causa in contrarium non obstante. Postea autem præfata Regina ꝑ literas Patentes sub magno Angliæ sigillo datas nono die Decembris anno regni sui vicesimo sexto juxta tenorẽ prædicti statuti Archiepiscopo Cantuariensi, Epõ Londinẽsi, & quibusdã aliis, vel eorũ tribus aut pluribus, authoritatẽ dedit inquirendi ad statutũ anni primi regni sui de libro precũ publicarũ, cum hac etiã clausula in iisdẽ literis Patentibus cõprehensa, viz. Prætera, plenã potestatẽ & authoritatẽ damus & cõcedimus reformandi, ordinandi, corrigendi, emendandi in singulis hujus Regni locis, omnes errores, hæreses, schismata, abusus, cõtemptus, enormitates spiritu-

the pleasure of Almighty God, the increase of Vertue, and the conservation of the Peace, and unity of this Realm. And that such Persons so to be named, assigned and authorised, should have full power and authority by vertue of that Act, and of such Letters Patents, under her Highness, her Heirs and Successors, to exercise, use and execute all the Premisses, according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary notwithstanding. And afterwards the said Queen by her Letters Patents under the Great Seal of England, bearing date the ninth day of December, in the six and twentieth year of her Reign, according to the tenor of the said Act, did authorise the Archbishop of Canterbury, the Bishop of London, and divers others, or any three or more of them, to inquire amongst others, of the Statute of the first year of her Reign, concerning the Book of Common Prayer, with this Clause also contained in the said Letters Patents, videlicet; Also we give and grant full power and authority to reform, redress, order correct and amend in all places of this Realm, all Errors, Heresies, Schisms, Abuses, Contempts and Enormities, Spiritual or Ecclesiastical whatsoever, which by any

Spiritual or Ecclesiastical Power, Authority or Jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended by Censures Ecclesiastical, Deprivation, or otherwise, &c. And upon proof thereof had, and the Offences aforesaid, or any of them sufficiently proved against any Person or Persons, by Confession, lawful Witness, or by any due manner, &c. That then you or three of you shall have full power and authority to order and award such punishment to every such Offendor by Fine, Imprisonment, Censure of the Church, or otherwise, or by all or any of the said ways, and to take such order for the redress of the same, as by your Wisdoms and Discretions shall be thought meet and convenient, as by the said Letters Patents more at large appeareth. And farther they found the Statute of the first year of the Reign of the said late Queen, by which it is enacted; That the Offendor against that Act concerning the Uniformity of Common Prayer, and being thereof lawfully convicted, according to the Laws of the Realm, by Verdict of twelve Men, or by his Confession, or by the notorious Evidence of the Fact, should forfeit for the first Offence the value of his Spiritual Living for one whole year, and should suffer six months

ales vel Ecclesiasticas quascunq; quæ aliqua authoritate, vel jurisdictione spirituali vel Ecclesiastica, reformari, ordinari, corrigi, coerceri, vel emendari legitime possint censuris Ecclesiasticis, deprivatione, vel alias, &c. Cumq; hæc & offensæ prædictæ, aut earũ aliqua contra ullã personã aut personas, confessione, legitimo testimonio, aut quavis debita forma sufficienter probentur, &c. Quod tunc vos vel tres ex vobis plenã potestatẽ & auctoritatem habebitis in ordinẽ redigendi, & pœnas infligendi singulis sic delinquentibus, mulcta, incarceratione, Censura ecclesiastica, vel alias, vel illis omnibus, & singulis, & ad eorum reformationem eam rationem ineundi, quæ vestra prudentia æquum & bonum videbitur, ut ex iisdem literis Patentibus plenius patet. Ad hæc compererunt statutum anni primi Regni ejusdem Reginæ, quo sancitum est, quod qui offenderit contra statutũ de precum publicarum uniformitate, & legitime juxta leges Regni duodecim virorum veredicto convictus, vel sua ipsius confessione, vel perspicua facti evidentia, prima vice amitteret emolumenta beneficiorum Ecclesiasticorum quæ habuit, & sex totos menses incarcereretur.

tur. Si secunda vice deliquerit, postquam convictus fuerit, *ipso facto* omnibus spiritualibus promotionibus deprivaretur. Tertia autem vice si deliquerit post duas convictiones, ut prædicitur, omnibus Ecclesiasticis promotionibus deprivatus ad vitā incarceretur. Et quod præfatus *Robertus Caudrey* ante tempus transgressionis præsuppositæ pdicta Rectoria seu beneficio corā Commissariis prædictis privatus fuerit, tum quod contra precum publicarū Librum concionatus sit, tum quod rem divinam juxta præscriptum ejusdē libri celebrare recusaverit, & in quibus sigillatim ostensū erat: Quæ deprivationis sententia per Episcopum Londinensem, cum assensu A.B.C.D. collegarum suorū lata. Jurati autem veredictum suum concluserunt: Quod si prædicta deprivatio non legitima esset, sed irrita; tunc defendentem transgressionis reum invenerunt: Sin autem deprivatio illa irrita non erat, tunc defendentem non reum invenerunt. Et hæc causa pro Tribunali per Advocatos utriusq; partis, & de Tribunali per Judices sæpius tractata est, & post magnam & maturam deliberationem, & cum cæteris Judicibus consultationē, Termino Hillarii anno ejusdem

Imprisonment. For the second Offence to be committed after such Conviction, he should be deprived ipso facto of all his Spiritual Livings. And for the third Offence to be committed after 2 Convictions as is aforesaid, he should be deprived of all his Ecclesiastical Livings, and be imprisoned during his life. And that the said Robert Caudrey before the time of the Trespass supposed, was deprived of his said Benefice before the said high Commissioners, as well for that he had preached against the said Book of Common Prayer, as also for that he refused to celebrate Divine Service according to the said Book, and shewed particularly wherein: Which said Sentence of deprivation was given by the Bishop of London, cum (a) assensu A.B.C.D. &c. collegarū suorum; And the Jury concluded their Verdict; That if the said deprivation were not warranted by Law, but void, then they found the Defendant guilty of the Trespass: And if the Deprivation were not void in Law, Then they found the Defendant Not Guilty. And this Case was solemnly and oftentimes debated at Bar by the Councel of either Party, and at the Bench by the Judges, and after great and long deliberation and consultation had with the rest of the Judges, was in the Term of S. Hillary in the 37th year of

(a) Poph. 59. Apres 4. b. 7. a.

The objections of the Councel of the Plaintiff

the said Queen adjudged. And it was argued by the Councel of the Plaintiff, that the said deprivation was void for 4 Causes.
1. First, The said Book of Common Prayer being authorized and commanded to be observed by the said Act of the first year of the Queen, upon the Forfeitures and Punishments therein comprised, the Offence of the Plaintiff is against that Act: for that Act only doth command the observation of the said Book, and inflicteth Punishments in several degrees for depraving or not observing of the same, and consequently if the Offence be against that Act, the Plaintiff ought to have been proceeded withal, and punished according to the same: And it was said, that the said Act was an Act of great Moderation and Equity, for the Offender for his first Offence should not be ipso facto deprived, but should only lose the Profits of his Ecclesiastical Livings for one year, and suffer Imprisonment for six months, to the end that such as were froward might have a time to repent, and the well minded a time to consent; and such care had the Act of the Offendors in this behalf, as if they committed one Offence, and then another, and after the second many more; yet should not the Offendor be deprived for any of the later Offences, unless he had been first judicially convicted of Record

Reginæ 37. adjudicata fuit. Per Advocatos querentis argumentatum est, deprivationem quatuor de causis esse irritam. *Primum*, Cum sancitum esset, & scitum, ut liber ille publicarum precum statuto illo anni primi Reginæ observaretur sub mulctis & pœnis ibidem comprehensis, ut querens peccavit contra illud statutum; Statutum etenim illud observationem tantummodo illius libri imperat, pœnamq; infligit diversis gradibus pro eodem depravato vel non observato, & consequenter si violatum sit statutum, querens juxta statutum tractandus & plectendus erat: Dictum insuper erat statutum illud fuisse admodum moderatũ, & æquũ, nam delinquens pro primo delicto non erat ipso facto deprivandus, sed tantũ emolumẽta Ecclesiasticorum suorum beneficiorum ad unum annum amitteret, & ad sex totos menses incarceretur, ut pervicaces spatium resipiscendi, & moderatiores tempus ad consentiendum haberent: eamq; delinquentium rationem statutum illud habuit, ut si quis primo, secundo, vel tertio deliquerit, non tamen deprivaretur pro posterioribus delictis, priusquam judicialiter convictus fuisset ex recordo per duo-

Objectiones ex parte querentis.
1.

duodecim virorum veredictum, vel sui ipsius confessione, vel perspicua facti evidentia: Ita ut secundum delictum pro quo deprivandus sit ex illo statuto, cōmittendum est post ejusmodi judicialem & solēnem convictionem & pœnā juxta statutum. Si ejusmodi publica pœna & inflictio non intellectum daret, & cor ad resipiscendū non aperiret, tunc post ejusmodi convictionem pro secundo delicto incarcerādus, & post ejusmodi convictionē deprivandus. Quod si in hac causa *Caudrey* querens beneficio illo ecclesiastico, sive Rectoria de *Southlusfenham* ꝑ primo delicto deprivatus erat, cum nunquam antea in quæstionem vocatus aut convictus fuisset ꝑ ejusmodi delicto. Conclusum igitur erat ꝑ hac prima parte, quod supremi illi Commissarii formam & ordinem Statuto præscriptū non observarunt; *Et non observata forma infertur adnullatio Actus*, & ex consequentia deprivatio est irrita, ideoq; sententia pro eo ferenda. Allegatum etiam erat ꝑ Querentis advocatos per anticipationem, quod etiamsi in eodem statuto erat *Proviso* pro Archiepiscopis, Episcopis, eorum Cancellariis, Cōmissariis, Archidiaconis, & aliis Ordinariis peculiarē ju-

by verdict of 12 Men, or by confession or notorious Evidence of the Fact: So as the second Offence for which he must be deprived by the said Act, must be done and committed after such a judicial and solemn Conviction and Punishment according to the said Act; And then if such an open Punishment and Infliction should not give him Understanding, and open his Heart to repent; Then upon a like Conviction for a second Offence, to be committed after such a Conviction, Deprivation should follow. But in the Case now in question, Caudrey the Plaintiff was deprived from his said Parsonage of Southluffenham for his said first Offence, being never convented or convicted for any such Offence before. And therefore it was concluded for this first Point; That the said High Commissioners had not pursued the Form and Order prescribed by the said Act; Et non observata forma, infertur adnullatio Actus; and consequently the deprivation of the Plaintiff is void, and therefore Judgment ought to be given for him. And it was said by the Plaintiffs Councel, by way of anticipation; That albeit there was a Proviso in the same Act for Archbishops, Bishops, and their Chancellors, Commissaries, Archdeacons, and other Ordinaries, having peculiar Jurisdiction,

yet

yet that did not give any strength to the said deprivation for two causes. First, That the Commissioners by force of the said Act of 1 Eliz. and of the said Letters Patents, are not within the said Proviso, but only Archbishops and Bishops, their Chancellors, Commissaries, &c. in respect of their ordinary Jurisdiction. 2. Admitting it should extend to the said High Commissioners, yet ought they to proceed according to the form and order of the said Act, for an Offence done against that Act.

2. Secondly, It was objected by the Councel of the Plaintiff, that Caudrey the Plaintiff was not deprived either by the Verdict of 12 Men, or by Confession, or by the notorious Evidence of the Fact, but by default in respect he appeared not, being duly precognizated or warned, which case, as it was objected, was (a) Casus omissus, & oblivioni datus, and not within the said Act.

(a) 5 Co. 2. p. 37. b.

3. Thirdly, It was objected on the behalf of the Plaintiff; That the said Sentence given by the said High Commissioners was utterly void, for that they or any 3 or more of them having Authority by force of the said Act, and of the said Letters Patents under the Great Seal, ought to join in the Sentence, and that one alone with the (b) consent of 2 or more of the other Commissioners cannot give a Sentence, for that every Commissio-

(b) Poph. 59. Devant 3. a. Apres 7. a.

risdictionem exercentibus, nullam tamen vim prædictæ deprivationi dedit, idq; duabus de causis: *Primum*, Qd' prædicti Cōmissarii virtute statuti anni primi Elizabethæ, & prædictarum literarū Patentiū in isto Proviso non comprehenduntur, sed solummodo Archiepiscopi, Episcopi, eorum Cancellarii, & Commissarii, &c. ratione jurisdictionis eorū ordinariæ. *Secundo*, Si modo detur quod ad supremos Commissarios extēderet, illi tamē juxta formam & ordinem statuti pro delicto contra statutum procederent.

Secundo, Per Advocatos querentis, quod *Caudry* non deprivatus erat vel duodecim virorū veredicto, vel confessione, vel perspicua facti evidentia, sed quod citatus & admonitus non comparuerit, quod ut illi objecerunt, *Casus erat omissus, & oblivioni datus*, & non statuto puniendus. 2.

Tertio, Ex parte querentis objectū erat, sententiam a primis illis Commissariis latam omnino esse irritam, quod illi vel tres, aut plures illorum authoritatem habentes ex illo statuto, & literis illis Patētibus sub magno Sigillo debent junctim sententiam ferre, & quod unus solus cum consensu duorum aut plurium Commissariorum sententiam ferre non possit, quia singuli æqualem 3.

lem habent authoritatem, & p easdē literas Patentes tres vel plures sententiam ferre debent cum aliorum consensu,& quod ejusmodi sententia lata p Commissarios ad audiendum & determinandum, vel per alios commissarios aut Judices legis Communis omnino erat irrita.
4. *Quarto*, & postremo objectum erat,quod pdicti Commissarii non erant juxta statutū illud nominati, & constituti; Jurisdictio enim, & potestas Coronæ per illud statutum, data est ejusmodi Commissariis qui sunt naturales, & nativi subditi, & ex speciali illo veredicto non constat, quod Commissarii illi fuerint naturales & nativi subditi, & quamvis Judices ut viri privati in particulari scientia illos naturales & nativos subditos cognoscerent, cum tamen Judices ex recordo existerēt, judicialibus tantum oculis intueri, & nihil aliud cognoscere, quā quod in Recordo illis apparet,nam ex illo non ex privata scientia sine recordo sententiam ferre debēt,& ex illo Recordo judicium suum in recordum inscribere. Et quandoquidem Regina prædicta (ut a Consiliariis querentis dictum erat) Ecclesiasticam jurisdictionem ex illo Statuto Parliamentario haberet,& ex eodē potestas ipsi data esset

ner hath equal Authority, and by the said Letters Patents three or more must give the Sentence with consent of others, and such a Judgment given by any Commissioners of Oyer and Terminer, or other Commissioners or Judges of the Common Law, were utterly void and of none effect. Fourthly, and lastly it 4.
was objected, That the said Commissioners were not nominated and appointed according to the said Act, for the Jurisdiction and Power given by the said (a) Act to the Crown, is to name (a) 1 El. c.1.
such Commissioners as be natural born Subjects, and it doth not appear by the said Special Verdict that the said Commissioners were (b) natural born (b) Poph. 59, 60
Subjects: And albeit the Judges as private Men in their particular knowledge did know them to be natural born Subjects, yet they being Judges of Record ought only to see with Judicial Eyes, and to take knowledge of no more than doth appear to them within the Record, for upon that, and not upon private knowledge out of the Record, they only must give their Judgment, and upon that Record enter their Judgment also of Record. And seeing that the late Queen had as it was said by the Plaintiffs Councel, Ecclesiastical Jurisdiction by the said Act of Parliament, and by the same, Power was given unto her to name Ecclesiastical

siastical Commissioners, she of necessity must make her nomination according to the said Act, having no other Power, as was objected, but by the said Act; And seeing it was not specially found that they were natural born Subjects; Et (a) de non apparentibus & non existentibus eadem est ratio: For this cause also the said Sentence of Deprivation was void, as given by Commissioners not warranted by the said Act.

(a) 4 Co.47.a. Vaughan 72. 12 Co.52.Hob. 295. Palm.15. 3 Bulstr. 110. 2 Inst. 20.

The Resolutions of the Court to the 1st and 2d.

(b) 2 Rol.222. 1 Jones 393.

As to the first and second objection, both being grounded upon the said (b) Act of Parliament, it was resolved by the whole Court, that notwithstanding these two objections, the sentence was not to be impeached for either of them, and that for three causes. First, for that the said Act concerning the Uniformity of Common Prayer, being in the (c) affirmative, doth not abrogate or take away the Jurisdiction Ecclesiastical, unless words in the negative had been added, as and not otherwise, or in no other manner or form, or to the like effect; And this appeareth by the general rule of all our Books, as it appeareth in 46 E.3.4. 47 E.3.10. 20 H.6.11. 36 H.6.3.3 E.4.27. 3 H.7.1.14 H. 7.10. 15 H.7.16. 33 H.8. Dyer 50. 4 Mar. Dyer 135. Stradlings Case, Pl.Com.207.&c. ¶ 2. The Ecclesiastical Law and the

(c) 2 Rol.222. Popham 60. 11 Co.64.a.

ecclesiasticos Cōmissionarios nominandi, illa necessario juxta illud statutū cum aliā potestatem, nisi inde ut objectum erat, non haberet eos nominaret; Cumque non speciatim inventum fuerit eos nativos fuisse subditos; *Et de non apparentibus, & non existentibus eadem est ratio:* Hanc etiā ob causam deprivationis sententia irrita erat, utiq; lata ꝑ Cōmissionarios non sufficienter authoritate munitos ex eodem statuto.

Determinationes Curiæ ad 1 & 2

Quod ad primam & secundam objectionem spectat, quorum utraq; illi Parliamti statuto innititur, determinatum erat de totius Curiæ sententia, quod objectionibus illis non obstantibus sententia lata in quæstionem non esset vocanda, idq; tribus de causis. Primum quod statutū illud de publicarum precū uniformitate, cum esset in parte affirmativa, jurisdictionē Ecclesiasticam non abrogat, aut tollit, nisi verba in parte negativa adjuncta fuissent, utiq; *Et non alias, vel ullo alio modo, vel forma*, aut ad eundē sensum: Hoc manifesto apparet, & clare constat ex generali omniū codicū nostrorū regula, uti etiā in 46 *E*.3.4.47 *E*.3.10 20 *H*.6.11. 36 *H*.6.3. 3 *E*.4. 27.3 *H*.7.1.14 *H*.7.10.15 *H*. 7.16.33 *H*.8. *Dyer* 50.4 *Mar*. *Dy*.135. ¶ 2. Lex ecclesiastica

Stradlings Case, *Pl. Com.* 207. &c.

ca & tẽporalis suas seorsim ꝓcedendi formulas habent, & diversos respiciunt scopos; altera temporalis ad pœnam infligendam corpori, terris, & bonis; altera spiritualis ꝓ salute animæ; altera ad externum hominem plectendum; altera ad internũ reformandum. Et hoc perspicuũ est in 10 *H.*7.22.& 10 *E.*4.10.&c. Hæ igitur distinctæ & separatæ jurisdictiones apte cohærent, & in hoc coeunt, ut homo totus externe & interne reformetur. *Tertio*, Proviso in prædicto statuto hanc quæstionem omni quæstione liberat, nam ex eo provisum, decretum, & sancitum est authoritate præfata, quod omnes & singuli Archiepiscopi, & Episcopi, & singuli eorũ Cancellariorum, Commissariorum, Archidiaconorum, quibus aliqua est spiritualis jurisdictio vigore ejusdem statuti plenariam potestatem, & authoritatẽ haberent, tam inquirendi in visitationibus, Synodis, & alibi intra ipsorum jurisdictionem, quam alio quovis tempore, & loco accipiendi informationes omnium, & singularam rerum, quæ supra memorantur commissæ vel perpetratæ intra limites & jurisdictionis, & authoritatis eorum, easq; puniendi Admonitione, Excommunicatione, Sequestratione vel Deprivatione, aut

Temporal Law have several proceedings, and to several ends; The one being Temporal to inflict punishment upon the Body, Lands or Goods; the other being Spiritual, pro salute Animæ; the one to punish the outward Man, the other to reform the inward; and this appeareth in 12 H.7.22. & 10 E.4.10. &c. Then both their distinct and several Jurisdictions consist and stand well together, and do join in this, to have the whole Man inwardly and outwardly reformed. ¶ 3. The Proviso in the said Act doth make this question without question, for by it is provided, ordained and enacted by the authority aforesaid; That all and singular Archbishops and Bishops, and every of their Chancellors, Commissaries, Archdeacons, and other Ordinaries, having any peculiar Ecclesiastical Jurisdiction, should have full power and authority by virtue of that Act, as well to enquire in their Visitation, Synods, and else where within their Jurisdiction, as at any other time and place to take occasions and informations of all and every the things above mentioned, done committed or perpetrated within the limits of their Jurisdictions and Authority, and punish the same by Admonition, Excommunication, Sequestration or Deprivation, and other

3. To the 3d.

Cen-

Censures and Process in like form as heretofore had been used in like Cases by the Queens Ecclesiastical Laws, as by the said Act appeareth. So as seeing, if that Act had never inflicted any punishment for depraving or not observing the Book of Common Prayer, yet the same being allowed and commanded to be observed for Uniformity of Common Prayer, and the Unity and Peace of the Church; The Ecclesiastical Judge may deprive such Parson, Vicar, &c. as shall deprave or not observe the said Book, as well for the first Offence, as he might have done by the Censures of the Church, and the Ecclesiastical Laws, as if no form of punishment had been inflicted by that Act; And this doth evidently appear by the said Proviso: For thereby notwithstanding any thing in that Act contained, they may punish such Offendors by Admonition, Excommunication, Sequestration or Deprivation and other Censures and Process, in like form as heretofore hath been used in like Cases by the Queens Ecclesiastical Laws, and are not bound to pursue the Form prescribed by the said Act, which is to punish the Offendor according to the Temporal Law. And it was resolved, that if the Jurisdiction of the Archbishops and Bi-

aliis censuris, & procedendi formulis, perinde ac hactenus in usu fuisset in ejusmodi causis, regiis legibus Ecclesiasticis, ut ex eodē statuto manifeste constat. Adeo ut si statutum illud nunquam ullam pœnam pro depravando, vel non observando publicarum precum libro inflixisset; attamen cum liber ille approbatus, & ex mandato Regis observandus esset pro precum publicarum uniformitate, & unitate, ac pace Ecclesiæ cōservanda; Judex Ecclesiasticus ejusmodi Rectorem, Vicarium, &c. deprivare potest, qui eundem librum depravabit, vel non observabit, tam ꝑ primo delicto, ut ꝑ Ecclesiæ censuras, & leges Ecclesiasticas facere potuisset, quasi nulla pœnæ aut puniendi forma, ꝑ statutum inflicta fuisset, & hoc ꝑ præfatū Proviso dilucide manifestū est. Ex eo enim, nihilo obstante in p̄dicto statuto, delinquentes admonitione, excommunicatione, sequestratione, deprivatione, & aliis censuris, & procedendi formulis, ꝑinde ac ante in usu fuerit in ejusmodi causis, per Ecclesiasticas Reginæ leges punire possunt, & non obstricti sunt ad formam prosequendā in eodem statuto præscriptā, quæ est delinquentē juxta legem temporalē punire. Determinatum etiam erat, quod si eo-

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Ad 3 objectionem.

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(a) 4 Co. 23. a. 9 Co. 48. b. Father *Parson's* 86.

To the 3.

(b) Poph. 59. Devant 3 a. 4. b

(c) 2 Rol. 7. 7 Co. 42. b. 4 Co. 29. a. 8 Co. 135. b. 2 Vent. 43. Cawly 31.

(d) 4 Co. 29. a. 7 Co. 19. a. Calvin's Case. Co. Lit. 125. a. 2 Leon. 176. Cawly 31.

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(e) 4 Co. 29 a.

C

(a) 2 Leon. 176, 177. 2 Rol. 224.

To the 4.

(b) 1 Jones 68

(c) 2 Co. 48.a. 4 Co. 71. b. 6 Co. 73. b. Co. Lit. 373. b. 2 Bulstr. 314. Hob. 297.

ginæ Eliz. in this Court between (a) Cheyney and Frankwell, all the matter being found, as this Case is by special Verdict was adjudged. As to the fourth objection, viz. That the said late Queen had only power by force of the said Act, to nominate Commissioners for Ecclesiastical Causes, and therefore the aforesaid Nomination not pursuing the Authority given unto her by that Act should be void. Hereunto a threefold answer was given and resolved by the whole Court. 1. That they which were Commissioners, and had places of Judicature over the Kings Subjects, should be (b) intended to be Subjects born and not Aliens. But if in verity they were Aliens, yet in respect of the general intendment to the contrary, it ought to be alledged and proved by the other party; For (c) Stabitur præsumptioni donec probetur in contrarium. Secondly, the Jurors have found that the Queen by her said Letters Patents, did authorize them secundum formam Statuti prædicti; And therefore it doth by necessary consequence amount to as much as if they had found they had been Subjects born: For if they were not Subjects born, they could not be authorized secundum formam Statuti prædicti. Vide 11 H. 4. 4. 13 Eliz. Dyer fol. And the rather for that this is found by special Verdict. ¶ 3. It

23 *Eliz. casus Cheyney.*

Ad 4.

Reginæ Eliz. in hac Curia inter *Cheyney* & *Frankwell* adjudicatũ erat, cum res tota, ut in hac causa speciali veredicto comperta fuerit. Ad quartã vero objectionẽ, viz. *Qd' præd' Regina virtute prædicti statuti solummodo potestatem habuit nominandi Commissarios ad causas Ecclesiasticas, & igitur præfata nominatio non subsequens authoritatem illi datam isto statuto irrita esset.* Huic tripliciter responsum est, & ꝑ totã Curiã determinatũ; Primo qd' illi erant Commissarii, & locum judicandi inter Regis subditos tenerent, nativos esse subditos, & non exteros, intelligi deberent: Sin autem revera exteri essent, tamen eo qd' generatim cõtra intellectũ erat, ab altera parte allegandũ & probandum erat. Nam, *Stabilitur præsumptum donec probetur in contrarium.* Secũdo, Juratores invenerũt Reginam authoritatem per Literas Patentes dedisse *secundum formam statuti prædicti*; & igitur ex consequẽtia necessaria tantũ valet, ac si eos subditos nativos fuisse invenissent. Si enim nativi subditi non erant, authoritate non instructi fuissent *secundum authoritatem Statuti præd'. Vide* 11 *H.* 4. 4. & 13 *Eliz. Dyer fol.* Et potius cum hoc speciali veredicto inventum sit. Tertio, de-

determinatũ erat, Quod statutum anni primi Reginæ Elizabethæ de Jurisdictione Ecclesiastica, non erat statutum quod novā legem introduxerit, sed antiquam declaraverit, quod perspici potest tam ex ipso titulo ejusdem Statuti, viz. *Statutum restituendi ad Coronam Jurisdictionem antiquam super Statum Ecclesiasticum & Spiritualem*; Quam etiā ex ipsius statuti cõtextu in diversis ejusdem partibus. Statutũ enim illud non aliā Jurisdictionẽ coronæ annectit quā quæ antea revera erat, aut esse debuit juxta antiquas hujus Regni leges, particula Regiæ Jurisdictionis, & unita coronæ imperiali, quæq; antea legitime exercebatur, & exerceri poterat intra regnũ, cujus Jurisdictionis, & formularũ procedẽdi in eadẽ scopus erat, ut omnia in causis Ecclesiasticis fierent ad Divini nominis gloriā, virtutis incremẽtũ & pacis, atq; unitatis hujus Regni cõservationẽ, ut ex diversis partibus ejusdem statuti liquet: Igitur, ut ex illo statuto nulla p̃tẽsa jurisdictio intra hoc regnũ exercita, q̃ vel impia, aut prærogativæ vel antiquæ legi Coronæ hujus regni adversa & repugnās restituebatur, vel restitui poterat præd' Coronæ, secundũ antiquum ejusdem jus & legẽ: Ita si statutũ il-

was resolved; That the said Act of the first year of the said late Queen concerning Ecclesiastical Jurisdiction, was not a Statute introductory of a new Law, but (a) declaratory of the old; which appeareth as well by the Title of the said Act, viz. An Act restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, &c. As also by the Body of the Act in divers parts thereof; For that Act doth not (b) annex any Jurisdiction to the Crown, but that which in truth was, or of right ought to be by the antient Laws of the Realm parcel of the Kings Jurisdiction, and united to his imperial Crown, and which lawfully had been, or might be exercised within the Realm; The end of which Jurisdiction, and of all the proceeding thereupon was, that all things might be done in Causes Ecclesiastical to the pleasure of Almighty God, the increase of Vertue, and the conservation of the Peace and Unity of this Realm, as by divers parts of the said Act appeareth: And therefore as by that Act no pretended Jurisdiction exercised within this Realm, being either ungodly or repugnant to the Prerogative or the ancient Law of the Crown of this Realm, was or could be restored to the same Crown, according to the ancient right and Law of the same: So if that

(a) 4 Inst. 325. Cawley 5, 6. Cr. Jac. 37. Moor 755.

(b) Cawley 8.

Act of the first year of the late Queen had never been made, it was resolved by all the Judges, that the King or Queen of England for the time being, may (a) make such an Ecclesiastical Commission as is before mentioned, by the ancient Prerogative and Law of England. And therefore by the ancient Laws of this Realm, this Kingdom of England is an absolute (b) Empire and Monarchy consisting of one Head, which is the King; and of a Body Politique, compact and compounded of many, and almost infinite several, and yet well agreeing Members; All which the Law divideth into two general parts, that is to say, The Clergy and the Laity, both of them next and immediatly under God, subject and obedient to the Head: Also the Kingly Head of this Politique Body is instituted and furnished with (c) plenary and entire power Prerogative, and Jurisdiction to render Justice and Right to every part and member of this Body, of what estate, degree or calling soever in all Causes Ecclesiastical or Temporal, otherwise he should not be a Head of the whole Body. And as in Temporal Causes, the King by the mouth of the Judges in his courts of Justice doth judge and determine the same by the Temporal Laws of England: (d) So in Causes Ecclesiastical and Spiritual, as namely, Blasphemy,

(a) 4 Inst. 326. Cr. Jac. 37. Hetl. 19.

(b) Apres 28. b

(c) Hob. 17.

(d) Co. Lit. 96. a. b. 344. a.

What Causes belong to the Ecclesiastical

lud anni primi præd' Reginæ nunquã sancitũ fuisset, determinatum & judicatum erat, qd' Rex & Regina Angliæ qui pro tempore fuerit, ejusmodi Ecclesiasticam Commissionem (cujusmodi antea memorata est) per antiquam prærogativam, & Angliæ legem instituere possit. Juxta igitur leges hujus regni antiquas, hoc Angliæ Regnum absolutũ est Imperiũ & Monarchia, ex uno capite, viz. Rege, & ex corpore politico compacto & composito ex mẽbris distinctisquã plurimis & fere infinitis, nihilominus inter se cohærentibus consistens. Quæ omnia lex bifariam *In Clericos & Laicos* dividit, qui utriq; ꝓxime & immediate sub Deo suo capite subjiciũtur & obsequũtur. Regiũ etiã hujus politici corporis caput plenaria & integra potestate prærogativa, & jurisdictione ad suũ cuiq; hujus corporis mẽbro distribuendum cujuscunq; loci ac ordinis, in omnibus causis Ecclesiasticis, vel secularibus instructũ est, & armatũ, alias totius corporis caput non esset. Et perinde ac in secularibus causis, Rex in foris judicialibus causas tẽporales judicat & determinat juxta leges Angliæ temporales: Ita in causis Ecclesiasticis & Spiritualibus, scilicet Blasphemia, Apostasia, Hæresibus, Schis-

Quæ causæ spectant ad forum Ecclesiasticum

authoritate Parliamentaria, vide Statutum de Circumspecte agatis, &c. ann. 13 E. 1. W. 2. 13 E. 1. c. 5. ad finem Artic. Cleri 9 E. 2. 15 E. 3. cap. 6. 31 E. 3. cap. 11. 2 H. 5. cap. 7. 1 H. 7. cap. 4. 23 H. 8. cap. 9. 24 H. 8. cap. 12. 27 H. 8. cap. 20. 32 H. 8. cap. 7. 1 E. 6. cap. 2. 2 E. 6. cap. 13. 1 Mar. cap. 3. 1 Eliz. cap. 1. 5 Eliz. cap. 23. 13 Eliz. cap. 10. Lit. lib. 2. cap. Frankal. f. 30. F.N.B. f. 41, 42, 43, 44, 45, 46, 47. Regist. f. 33, 34, 44, &c.

Schismatibus, Ordinibus cõferendis, Clericorum admissionibus, & Institutionibus, rerum divinarum Celebratione, Ritibus Matrimonialibus, Divortiis, Bastardiis generalibus, Decimarum jure, & earundẽ Subtractionibus, Oblationibus, Obventionibus, Dilapidationibus, Ecclesiarũ reparationibus, Testamentorũ probationibus, Administrationibus, Simoniis, Incestibus, Fornicationibus, Adulteriis, Castitatis oppugnationibus, Pẽtionibus, Procurationibus, Appellationibus Ecclesiasticis, Pœnitentiæ commutatione, & aliis, (quorum cognitio ad cõmunes leges Angliæ non spectat) a Judicibus Ecclesiasticis determinandæ & decidendæ sunt, juxta hujus Regni regias leges Ecclesiasticas. Queãdmodũ enim Leges, quas Athenis Romani transtulerũt, cum ab ipsis cõprobatæ & cõfirmatæ fuissent, eas nihilominus Jus Civile Romanorum nominarũt; uti etiam Normãni plerasq; ipsorũ Leges ex Anglia mutuò acceptas nomine Legum, vel cõsuetudinum Normanniæ insignierũt: Sic licet Angliæ Reges, Ecclesiasticas quas habẽt Leges ab aliis deduxerũt, ex illis tamẽ quotquot generali oĩum consensu ap̃pbatæ fuerunt, apposite & recte *Angliæ Leges Regiæ Ecclesiasticæ* appellãtur; Quod

Apostasie from Christianity, Heresies, Schismes, ordering Admissions, Institutions of Clarks, Celebration of Divine Service, Rights of Matrimony, Divorces, general Bastardy, subtraction and right of Tithes, Oblations, Obventions, Dilapidations, Reparation of Churches, Probate of Testaments, Administrations and accounts upon the same, Simony, Incests, Fornications, Adulteries, Sollicitation of Chastity, Pentions, Procurations, Appeals in Ecclesiastical Causes, Commutation of Penance, and others, (the conusans whereof belong not to the Common Laws of England) the same are to be determined and decided by Ecclesiastical Judges, according to the Kings Ecclesiastical Laws of this Realm: For as the Romans fetching divers Laws from (a) Athens, yet being approved and allowed by the state there, called them notwithstanding Jus Civile Romanorum: And as the (b) Normans borrowing all or most of their Laws from England, yet baptized them by the Name of the Laws or Customs of Normandy; So albeit the Kings of England derived their Ecclesiastical Laws from others, yet so many as were proved, approved and allowed here, by and with a general consent, are aptly and rightly called, The (c) Kings Ecclesiastical Laws of *England*; which whosoever

Courts, see *Circumspecte agatis*, 13 E. 1. W. 2. 13 E. 1. cap. 5. versus finem, Artic. cleri 9 E. 2. 15 E. 3. cap. 6. 31 E. 3. cap. 11. 2 H. 5. cap. 7. 1 H. 7. cap. 4. 23 H. 8. cap. 9. 24 H. 8. cap. 12. 27 H. 8. cap. 20. 32 H. 8. cap. 7. 1 E. 6. cap. 2. 2 E. 6. cap. 13. 1 Mar. cap. 3. 1 Eliz. cap. 1. 5 Eliz. cap. 23. 13 Eliz. cap. 10. Lit. lib. 2. cap. Frankal. f. 30. F.N.B. fol. 41, 42, 43, 44, 45, 46, 47. Regist. f. 33, 34, 44, &c.

(a) Dav. 71. a.

(b) Præf. ad 3 Rep. circa finem.

(c) Co. Lit. 11. b. Doctor Cousins Apology 102.

soever shall deny, he denieth that the King hath full and plenary power to deliver Justice in all causes to all his Subjects, or to punish all Crimes and Offences within his Kingdom: For that as before it appeareth the deciding of matters so many, and of so great importance, are not within the conusans of the Common Laws; and consequently that the King is no compleat Monarch, nor Head of the whole and entire Body of the Realm. But (a) to confirm those that hold the Truth, to satisfie such as being not instructed, know not the ancient and modern Laws and Customs of England, every man being perswaded as he is taught; These few demonstrative proofs out of the Laws of England, instead of many in order, & serie temporum, are here added.

(a) *Parson*'s Answer to the 5th *Rep.* 93.

quicunq; denegaverit, idem denegat Regem plenariã habere potestatẽ, justitiam in omnibus causis suis subditis administrãdi, vel crimina & delicta infra hoc Regnũ puniẽdi: Quia ut jam liquido cõstat determinatio tot & tãti momẽti causarum in cognitioẽ Legũ Cõmunium non cadit, & cõsequẽter Rex nõ est absolutus Monarcha, nec caput totius integri corporis hujus Regni. Sed ad eos cõfirmãdos, qui veritatem agnoscũt, & ad satisfaciẽdũ illis, qui nondũ instructi antiquas & modernas Angliæ Leges & cõsuetudines ignorant, cum singuli ita fiont persuasi ut informati; Hæc paucula argumẽta certissima & quasi Apodeictica, quæ instar multorũ esse possint suo ordine, & tẽporũ serie hic subjiciuntur.

(b) Kenulphus Rex, &c. ꝑ Literas suas Patẽtes, cõcilio & consensu Episcoporũ, & Senatorum gentis suæ, largitus fuit Monasterio de Abnidon in Comitatu Bark, ac cuidam Ruchnio tunc Abbati Monasterii, &c. quandam ruris sui portionem, id est, quindecẽ Mansias, in loco qui a Ruricolis tunc nũcupabatur Culnam, cum omnibus utilitatibus ad eandem pertinentibus, tam in magnis quam in modicis rebus in æternam hæreditatem. Et quod prædictus Ruchnius, &c. ab omni Episcopali Jure in sempiternũ esset quietus, ut inhabitatores ejus, nullius Episcopi

(b) This King reigned *Anno Dom.* 755. Stamford lib. 3. c. 38. f. 111. Full. Ch. Hist. 101, 102. Parson's Answer 93, 94, 95. Dav. 73. a. Br. Coron. 129. Moor 120. Stanf. Coron. 111. b. Burnet's Reform. pars 1. lib. 3. f. 187. This Charter was pleaded 1 H. 7. 23, 25. *Nota.*

Kenulphus Rex, &c. per Literas suas Patentes, concilio & consensu Episcoporum, & Senatorum gentis suæ, largitus fuit Monasterio de Abnidon in Com. Bark. ac cuidam Ruchnio tunc Abbati Monasterii, &c. Quandam ruris sui portionem, id est, quindecim Mansias in loco, qui a Ruricolis tunc nũcupabatur Culnam, cum omnibus utilitatibus ad eandem pertinentibus, tam in magnis, quam in modicis rebus in æternam hæreditatem. Et qd' præd' Ruchnius, &c. ab omni Episcopali jure in sempiternum

Regnavit anno Dom. 755. *Stamford lib.* 3. *fol.* 111.

1 H. 7. f. 23, 25.

piternum esset quietus, ut inhabitatores ejus nullius Episcopi, aut suorum officialium jugo inde deprimantur, sed in cunctis rerum eventibus & discussionibus causarum Abbatis Monasterii præd' decreto subjiciuntur. Ita qd',&c. Ut eadẽ Charta anno 1 *H.*7.producta, & a *Stanfordo* allegata plene apparet: Quæ Charta concessa ante annos 850. cõfirmata fuit per *Edwinum Britanniæ Anglorum Regem, & Monarcham:* Ex qua ꝑspicuũ est, Regẽ Charta sua in Parliamẽto cõfecta, cõcilio & consensu Episcoporum & Senatorũ gẽtis suæ qui in Parliamẽto cõvenerãt, præd' Abbatem Episcopi jurisdictione liberasse, & exemisse, &c. Et eadem Charta Abbati intra ejus Monasterium, Ecclesiasticam Jurisdictionem concessit: Quæ Ecclesiastica Jurisdictio à Corona derivata, usq; ad dissolutionem ejusdem Monasterii tempore *H.* 8. permansit.

Iste Edwin. regnavit ann. Dom. 955.

aut suorũ officialiũ jugo inde deprimãtur, sed in cũctis rerũ evẽtibus & discussionibus causarũ Abbatis Monasterii prædicti decreto subjiciãtur. Ità qd',&c. As by the said Charter pleaded in 1 H. 7. and vouched by Stanford, at large appeareth: Which Charter granted about 850 years sithence, was after confirmed ꝑ Edwinũ Britanniæ Anglorũ Regẽ & Monarchã: By (a) which it appeareth, that the King by his Charter made in Parliament (for it appeareth to be made by the Counsel and Consent of his Bishops and Senators of his Kingdom which were assembled in Parliament,) did discharge and exempt the said Abbot from the Jurisdiction of the Bishop, &c. And by the same Charter did grant to the said Abbot Ecclesiastical Jurisdiction within his said Abby, which Ecclesiastical Jurisdiction being derived from the Crown, continued until the dissolution of the said Abby, in the Reign of King Henry the eighth.

Rex Edwin. regnavit anno Dom. 955.

(a) Full. Ch. Hist. 102. Parson's Answer 94.

Regnante Anglorum Rege Edw. *Confessore.*

REX autem, qui Vicarius summi Regis est, ad hoc constitutus est, ut Regnum & Populum Domini, & super omnia Sanctam Ecclesiam regat & defendat ab injuriosis, maleficos autem destruat.

Leg. Sanct. Edw. cap. 19.

In the Reign of King *Edward* the Confessor.

THE King, who is the Vicar of the highest King, is ordained to this end, that he should govern and rule the Kingdom and People of the Land, (a) and above all things the holy Church, and that he defend the same, from

S. K. Edw. Laws c. 19.

(a) Spelm Coun. Tom. 1. pa. 634.

from wrong doers, and destroy and root out workers of mischief. And this shall suffice for many before the Conquest.

Et hoc pro multis ante Conquestum sufficiat.

In the Reign of King *William* the First.

Regnante Gulielmo *primo.*

(a) 7 E. 3. tit. Quar. Imp. 19. (a) Dav. 73. a.

(b) Seld. Not. ad Eadmerum 165.

(c) Burnets Reform. pars 1. lib. 3. f. 187.

IT is agreed, that no Man can make any appropriation of any Church having cure of Souls, being a thing Ecclesiastical, and to be made to some person Ecclesiastical, but he that hath Ecclesiastical Jurisdiction. But (b) William the first of himself without any other, (as King of England) (c) made Appropriation of Churches with Cure, to Ecclesiastical persons, wherefore it followeth that he had Ecclesiastical Jurisdiction.

INter omnes cōvenit, qd' nemo possit appropriare ullā Ecclesiā, cui animarum cura incumbit, cum sit res Ecclesiastica, & Ecclesiasticæ personæ approprianda, nisi ille qui Jurisdictionē habet Ecclesiasticam. Sed Rex *Gulielmus* primus ex se sine quovis alio, Ecclesias cum cura personis Ecclesiasticis ut Rex Angliæ appropriavit, unde ipsum Ecclesiasticam jurisdictionē habuisse consequitur.

7 *E.* 3. *tit. Quare impedit,* 19.

In the Reign of King *Henry* the First.

Regnante Henrico *primo.*

The Charter of *H.* 1. Founder of the Abby of *Reading,* in the 26th year of his Reign, and in the year of our Lord, 1125.

HEnry by the Grace of God King of England, Duke of Normans, To all Archbishops, Bishops, Abbots, Earls, Barons, and to all Christians aswell present, as to come, &c. We do ordain aswell in regard of Ecclesiastical as Royal power that whensoever the Abbot of Reading shall die, that all the Possessions of the Monastery wheresoever it is, do remain entire and free with all the Rights and Customs thereof, in the hands and disposition

HEnricus Dei gratia Rex Angliæ, Dux Normānorū, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus suis, & oībus Christianis tam pꝛ̄sentibus quam futuris salutē perpetuā, &c. Statuimus autē tam Ecclesiasticæ quā Regiæ prospectu potestatis, ut decedēte Abbate Radingensi, omnis possessio Monasterii ubicūq; fuerit remaneat integra & libera cum omni jure & consuetudine sua, in manu & dispositione

Carta Henrici *Regis* Angliæ *primi fundatoris Abbathiæ de* Reading, *anno* 26 *Regni sui & anno Dom.* 1125.

positione Prioris, & Monachorum Capituli Radingensis; Hoc autem ideo statuimus, statutumq; perpetuo servandum firmavimus, quia Abbas Radingensis non habet proprios redditus sed cōmunes cum fratribus; Qui autem Deo annuēte Canonica electione Abbas substitutus fuerit, non cum suis secularibus consanguineis seu quibuslibet aliis, eleemosinas Monasterii male utendo dissperdat, sed pauperibus, & peregrinis, & hospitibus suscipiendis curam gerat, terras censuales non ad feudum donet, nec faciat Milites nisi in sacra veste Christi, in qua parvulos suscipere modeste caveat, maturos autem seu discretos, tam Clericos quam Laicos suscipiat.

of the Prior and the Monks of the Chapter of Reading: We do therefore ordain and establish this Ordinance to be observed for ever, because the Abbot of Reading hath no Revenews proper and peculiar to himself, but common with his Brethren; Whosoever by Gods will shall be appointed Abbot in this place by Canonical Election, may not dispend the Alms of the Abbey by ill usage with his secular Kinsmen, or any other, but in entertaining the poor Pilgrims and Strangers, and that he have a care not to give out the Rent-Lands in Fee, neither that he make any Servitors or Souldiers, but in the sacred garment of Christ, wherein let him be advisedly provident he entertain not young ones, but that he entertain Men of ripe age or discreet, aswel Clerks, as Lay-men.

Regnante Henrico *tertio.*

In the Reign of King *Henry* the Third.

2 H. 3. Tit. Prohition 13. 4 H. 3. ibidem 15. 15 H. 3. ibid. 22. Registr. fol.

TEmpore H.3.& Progenitorum ejus Regum Angliæ, & jā inde, si quis aliquem in jus vocaret corā Judice Ecclesiastico intra Regnū ulla de re, cujus cognitionē legitimā illa Curia approbatione, & consuetudine non haberet, Rex semper per Breve sub magno sigillo procedere prohibuit: Quod si suggestio illa Regi facta, in

2 H. 3. Tit. Prohibition 13. 4 H. 3. ibidem 15. 15 H. 3. Tit. Prohibition 22. Registr. f. F. N. B. Tit. Prohibition 40, 41, &c.

IN all the time of H. 3. and his Progenitors Kings of England, and ever sithence, if any man did sue afore any Judge Ecclesiastical within the Realm, for any thing whereof that Court by allowance and custom had not lawful conusance, the King did ever by his Writ under his great Seal prohibit them to procéed: And if the suggestion made to the King, whereupon the

the Prohibition was grounded were after found untrue, then the King by his Writ of consultation under his great Seal, did allow and permit them to proceed. Also, in all the Reign of H.3. and his Progenitors Kings of England, and ever sithence, if any issue were joyned upon the loyalty of marriage, general bastardy, or such like, the King did ever write to the Bishop of that Diocess, as mediate Officer and Minister to his Court, to certifie the loyalty of marriage, bastardy, or such like; all which do apparently prove, that those Ecclesiastical Courts were under the Kings Jurisdiction and Commandment, and that one of the Courts were so necessarily incident to the other, as the one without the other could not deliver Justice to the parties, aswel in these particular Cases, as in a number of Cases before specified, whereof the Kings Ecclesiastical Court hath Jurisdiction: Now to command and to be obeyed, belong to Sovereign and Supream Government.

By the ancient Canons and Decrees of the Church of Rome, the Issue born before solemnization of Marriage, is as lawfully inheritable, (Marriage following) as the Issue born after Marriage; But this was never allowed or appointed in England, and therefore was never of any force here: And this appeareth by the Statute of

quam prohibitio innixa erat minime vera comperta esset, Rex per Breve suũ cõsultationis sub magno suo sigillo procedere permisit. Prætereà tẽpore hujus *H*.3. & Progenitorũ ejus Regũ Angliæ, & jam inde, si de bigamia, generali bastardia, vel hujusmodi ad litis cõtestationẽ perventũ esset, Rex semper Episcopo ejus Diocesios, ut mediato officiario & ministro imperat, ut de bigamia, bastardia & hujusmodi significaret: Quæ omnia planè comprobant Ecclesiastica illa Fora Regis jurisdictioni & imperio subjici, & eadẽ Fora ità necessariò coincidere, ut alterum sine altero jus suum cuique tribuere non posset, tam in his causis particularibus, quam in pluribus aliis prius memoratis, quarũ regia Fora Ecclesiastica habent Jurisdictionem. Ad Reges autem & Monarchas solummodò spectat, ut ipsi imperent, & ipsis imperantibus aliis obtemperent.

Juxta antiquos Romanæ Ecclesiæ Canones & decreta, proles ante matrimoniũ celebratũ nata, perinde legitima est & hæreditatẽ adeat, (matrimonio subsequẽte) quam quæ post matrimonium nata sit: Verùm enimverò hoc in Anglia nunquam approbatũ vel admissum, & igitur vim nullam hîc habuit, quod ex

Statutum de Merton anno 20 H. 3.

ex statuto de Merton anno vicesimo *Hen.* 3. perspicue hisce verbis eluceat.

Ad Breve Regis de Bastardia utrum aliquis natus ante Matrimonium habere poterit hæreditatem, sicut ille qui natus est post matrimonium, responderunt omnes Episcopi quod nolunt nec possunt ad istud Breve respondere, quia hoc esset contra communem formam Ecclesiæ. Et rogaverunt omnes Episcopi Magnates, ut consentirent quod nati ante matrimoniũ essent legitimi, sicut illi qui nati sunt post matrimoniũ quantum ad successionem hæreditariam, quia Ecclesia tales habet pro legitimis. Et omnes Comites & Barones una voce responderunt; Nolumus leges Angliæ mutare, quæ hucusque usitatæ sunt & approbatæ.

The Statute of *Merton* anno 20 H. 3.

Merton made in the twentieth year of King Henry the 3d.

To the Kings Writ of Bastardy, whether one being born afore Matrimony, may inherit in like manner as he that is born after Matrimony, all the Bishops answered, that they would not, nor could not answer to it, because it was directly against the common order of the Church; And all the Bishops instanced the Lords, that they would consent that all such as were born afore Matrimony should be legitimate, aswell as they that be born within Matrimony, as to the succession of Inheritance, forsomuch as the Church accepteth such to be legitimate: And all the Earls and Barons with one voice answered; We (a) will not change the Laws of England which hitherto have been used and approved.

(a) Moor 120. Præf. 4 Rep. Co. Lit. 245. a. 2 Inst. 96, 97.

Regnante Edwardo *primo.*

30 Lib. Ass. pl. 19. Brook tit. Præmunire pl. 10. Nota hoc fuit per communem Legem Angliæ ante aliquod statutum, &c.

Edwardo ejus nominis primo regnãte, subditus quidam excõmunicationis Bullam contra alterum hujus Regni subditum intulit, & corã Domino Thesaurario Angliæ divulgavit, hoc læsæ Majestatis crimen contra Regiam Coronam & Dignitatem judicatum est;

In the Reign of King *Edward* the First.

Vide 30 E. 3. lib. Ass. pl. 19. Brook tit. Præmunire pl. 10. Note, this was by the Common Law of *England* before any Statute made.

In the Reign of King Edward the First, a Subject brought in a Bull of Excommunication against another Subject of this Realm, and published it to the Lord Treasurer of England, and this was by the ancient Common Law of England adjudged Treason against the King, his Crown and Dignity, for the which

which the offendor should have been drawn and hanged, but at the great instance of the Chancellor and Treasurer, he was only abjured the Realm for ever.

pro quo delinquēs extremo supplicio afficiēdus erat, trahendus scilicet & suspēdendus; Sed Cancellario & Thesaurario intercedentibus Regnum solummodò in perpetuum abjuravit.

19 E. 3. tit. Quare non admisit 7.

Vide 39 E. 3. 20.

The said King Edward the 1. presented his Clerk to a Benefice within the Province of York, who was refused by the Archbishop, for that the Pope by way of Provision had conferred it on another; The King thereupon brought a Quare non admisit, the Archbishop pleaded that the Bishop of Rome had long time before provided to the said Church, as one having supream Authority in that Case, and that he durst not, nor had power to put him out, which was by the Popes Bull in possession: For which his high contempt against the King, his Crown and Dignity, in refusing to execute his Sovereigns Commandment, fearing to do it against the Popes Provision, by Judgment of the Common Law, the Lands of his whole Bishoprick were seised into the Kings hands, and lost during his Life; which Judgment was before any Statute or Act of Parliament was made in that case. And there it is said, that for the like Offence, the Archbishop of Canterbury had been in worse case by the Judgment of the Sages of the Law, then to be

Note.

Idem Rex *Edwardus* Clericum suū ad beneficium in Provincia Eboracensi nominavit, qui ab Archiepiscopo rejectus, quoniam Papa per Provisionē idem beneficium alteri contulerat; Hinc Rex emisit Breve *Quare non admisit*, allegavit Archiepiscopus, quod Pontifex Romanus jam anteà eidē beneficio alterum providisset, utique qui supremam in illa causa authoritatē haberet, & quod ipse minime ausus sit, nec potestatē habuerit ipsum amovendi, qui per Bullam Papalem jam possederat. Pro hoc contemptu in Regem, Coronā & dignitatē, eo qd' recusaverit supremi sui Dñi mādatum exequi contra Provisionem Papalem, communis Legis judicio possessiones totius Episcopatus in Regis manus fuēre redactæ, & ad ejus vitā amissæ; Quæ sententia lata fuit, priusquā aliquod Parliamēti statutū hac de re factum fuerit. Ibidem etiam memoratur, quod pro ejusmodi delicto asperius actum fuisset cum Archiepo Cantuariensi Juris-consultissimorum judicio, quam pro con-

19 E. 3. tit. Quare non admisit, 7.

Vide 39 E. 3. 20.

Nota.

contemptu puniri; nisi Rex in gratiam accepisset.

Statutum de Bigamis, Anno 4 E. 1.

De Bigamis quos Dominus Papa in Concilio suo Lugdunensi omni privilegio Clericali privavit, per Constitutionem inde editam, & unde quidam Prælati illos qui effecti fuerant Bigami ante prædictam Constitutionem, (quando de felonia rectati fuerunt) tanquam Clericos exigerunt sibi liberandos: Concordatum est & declaratum coram Rege & Concilio suo, quod Constitutio illa intelligenda sit, quod sive effecti fuerint Bigami ante prædictam Constitutionem, sive post, de cætero non liberentur Prælatis, immo fiat eis Justicia sicut de Laicis.

Statutum de An. 25 E. 1. apud Carlisle 20 E. 3. *tit. Essoine* 24.

In Statuto Parliamti Carleoli habito Añ Reg ejusdẽ Regis E. I. 25. declaratũ est, qđ Sacro-sancta Ecclesia Anglicana in statu Præsulũ inẽ regnũ Angliæ ꝑ Angliæ Regem & ejus progenitores ad populum in Lege DEI instituendum, hospitalitatem colendã, eleemosynam erogandam, & ad alia Charitatis opera exercenda, &c. fundata fuisset; Eosdemq; Reges tẽporibus retroactis solere Præsulum, & Clericorum, quos evexerãt concilio & judicio, uti ad Regni incolumitatem

punished for a contempt, if the King had not extended grace and favour to him.

Concerning men twice married (called Bigamy) whom the Bishop of Rome, by a Constitution made at the Council of Lyons, hath excluded from all priviledge of Clergy, whereupon certain Prelates (when such persons have been attainted for Felons) have prayed for to have them delivered as Clerks which were made Bigamy before the same Constitution. It is agreed and declared before the King and his Council, that the same Constitution shall be understood in this wise, that whether they were Bigamy before the same Constitution or after they shall not from henceforth be delivered to the Prelates, but Justice shall be executed upon them as upon other Lay People.

The Statute of *Bigamis*, in *An.* 4 *E. 1.* Observe how the King by advice of his Counsel (that is, by Authority of Parliament) expounded how the said Council should be understood, and in what sense it should be received and allowed here.

In an Act made at a Parliament holden at Carlisle, in the xxv year of the said King Edw. I. It is declared, That the Holy Church of England was founded in the state of Prelacy, within the Realm of England, by the King and his Progenitors, &c. for them to inform the People in the Law of GOD, and to keep Hospitality, give Alms, and do other Works of Charity, &c. And the said Kings in times past were wont to have their Advice and Counsel for the safegard of the Realm, when they had need of such

Statutum de Anno 25 E. 1. *Carlisle,* vide 20 E. 3. tit. Essoin 24.

Nota. The first attempt was to usurp upon such Ecclesiastical things as pertained to the Clergy of *England*, who at that time stood in great awe of the Church of *Rome*.

Prelates and Clerks so advanced; The Bishop of Rome Usurping the Seignories of such Benefices, did give and grant the same Benifices to Aliens which did never dwell in England, and to Cardinals which might not dwell here, &c. in adnullation of the state of the Holy Church of England, disherison of the King, Earls, Barons, and other Nobles of the Realm, and in offence and destruction of the Laws and Rights of this Realm, and against the good disposition and will of the first Founders, It was Enacted by the King, by assent of all the Lords and Cominalty in full Parliament, That the said Oppressions, Grievances and Damage in this Realm, from thenceforth should not be suffered, as more at large appeareth by that Act.

Apres f. 18. a.

cum opus fuerit; Quodq; Pontifex Romanus sibi usurpans ejusmodi beneficiorum Ecclesiasticorum superioritatem, eadem beneficia exteris qui nunquam in regno Angliæ habitabant & Cardinalibus qui hîc habitare non poterant, &c. contulerit, ad statum Sacrosanctæ Ecclesiæ Anglicanæ subvertendum, ad Regem cum Comitibus, Baronibus, & Regni proceribus heræditate avita deprivandũ, ad leges & consuetudines hujus Regni tollẽdas, & ad consilia voluntatesq; fundatorũ infringenda: Unde sancitum erat per Regem cum assensu Procerum & Communitatis in pleno Parliamento, quod prædictæ oppressiones, gravamina, & detrimenta in hoc Regno jam inde amoverentur, & tollerentur, ut plenius ex ipso statuto apparet. *Nota.*

In the Reign of King *Edward* the Second.

Albeit by the Ordinance of Circumspecte agatis, made in the xiii year of E. I. and by general Allowance and Usage, the Ecclesiastical Courts held Plea of Tythes, Obventions, Oblations, Mortuaries, Redemptions of Pennance, laying of violent hands upon a Clerk, Defamations, &c. yet did not the Clergy think themselves assured nor quiet from Prohibitions

Regnante Edwardo *Secundo.*

Etsi ex decreto Circumspectè agatis facto An. E. I. 13. recepta approbatione, & consuetudine, fora Ecclesiastica placita tenuerint, & judicia exercuerint de Decimis, obventionibus, oblationibus, mortuariis, pœnitentiæ redemptionibus, violenta manus injectione in Clericos, defamationibus, &c. Clerici tamen se minimè securos à Prohi-

Articuli super cartas. 9 E. 2. cap. 16.

Prohibitionibus per Subditos procuratis estimarunt, donec Rex Edwardus secundus per literas Patentes cum consensu Parliamenti ad Cleri petitionem, illis jurisdictionem in prædictis causis exercere concessisset. Rex in Parliamento Anno Regni sui nono, post particularia responsa ad Petitiones eorum de rebus præfatis concedit, & Regium assensum hisce verbis præbuit.

purchased by Subjects, until that King Edw. II. by his Letters Patents under the Great Seal, in and by consent of Parliament, upon the Petitions of the Clergy, had granted unto them to have Jurisdiction in those cases. The King in a Parliament holden in the 9th year of his Reign, after particular answers made to their Petitions, concerning the matters abovesaid, doth grant and give his Royal assent in these Words.

The Statute of 9 E. 2. Artic. Cleri c. 16.

See the Ordinance of *Circumspecte agatis* 13 E. 1. to this effect.

Nos desiderantes statui Ecclesiæ Anglicanæ, & tranquillitati & quieti Prælatorum Cleri prædictorum quatenus de jure poterimus providere; ad honorem Dei, & emendationem status dictæ Ecclesiæ & Prælatorum & Cleri prædicti, omnes & singulas responsiones prædictas quæ patent in eodem Actu, ac omnia & singula in eisdem responsionibus contenta ratificantes & approbantes; ea pro nobis & hæredibus nostris concedimus & præcipimus imperpetuum inviolabiliter observari: Volentes & concedentes pro nobis & hæredibus nostris, Quod prædicti Prælati & Clerus, & eorum Successores, imperpetuum in præmissis Jurisdictionem ecclesiasticam exerceant, juxta tenorem responsionis prædictæ.

We desiring, as much as of right we may, to provide for the State of the Church of *England*, and the tranquility and quiet of the Prelates of the said Clergy, to the honour of God, and the amendment of the state of the said Church, and of the Prelates and Clergy, ratifying and approving all and singular the said answers which appear in the said Act, and all and singular things in the said answers contained; we do for us and our heirs grant and command that the same be inviolably kept for ever: willing and granting for us and our heirs, That the said Prelates and Clergy and their successors for ever, do exercise Ecclesiastical Jurisdiction in the Premisses, according to the tenor of the said answer.

By this Statute of 9 E. 2. *and the Statutes of* 15 E. 3. c. 6. 31 E. 3. c. 11. *and by other Statutes heretofore mentioned, the Jurisdiction of the Ecclesiastical Courts is allowed and warranted by consent of Parliament, in all cases wherein they now have Jurisdiction, so as these Laws may be justly called, The Kings Ecclesiastical Laws, or the Ecclesiastical Laws of* England.

In the Reign of King *Edward* the Third.

16 *E.* 3. tit. Excom. 4.

AN Excommunication by the Archbishop, albeit it be disannulled by the Pope or his Legats, is to be (a) allowed, neither ought the Judges give any allowance of any such Sentence of the Pope, or his Legat.

(a) Co. Lit. 134. a. F.N.B. 64. f. Apres 16. a.

In the Reign of *E.* 3. (b) Co. Lit. 134. a. 3 Co. 75. b.

It is often resolved that all the (b) Bishopricks within England were founded by the Kings Progenitors, and therefore the Advowsons of them all belong to the King, and at the first they were Donative: And that if an Incumbent of any Church with Cure dye, if the Patron present not within six Months, the Bishop of that Dioces ought to collate, to the end the Cure may not be destitute of a Pastor; If he be negligent by the space of six Months, the Metropolitan of that Dioces shall confer one to that Church: And if he also leave the Church destitute by the space of six Months, then the Common Law giveth to the King as to the Supream within his own Kingdom, and not to the Bishop of Rome, power to provide a competent Pastor for that Church.

17 *E.* 3. 23.

The King may not only exempt any Ecclesiastical Person from the Jurisdiction of the Ordinary, but may grant unto him Episcopal Jurisdiction: As thus it appeareth there, the

Regnante Edwardo *tertio.*

EXcommunicatio facta per Archiepiscopum, licet adnullata sit per Papam, aut ejus à latere Legatum, est approbanda, nec Judices ullo modo sententiam Papæ aut ejus à latere Legati in Anglia approbare debent. 16 E. 3. *tit. Excom.* 4.

Sæpius determinatum est omnes Episcopatus Angliæ per Regis Progenitores fundatos fuisse, & igitur advocationes eorum omnium ad Regem spectare; Principiò etiam donativos fuisse, & quod si Incumbens alicujus Ecclesiæ cum cura diem obierit, si Patronus intra sex menses non præsentaverit, Episcopus Diocesios conferre debet, nè Eccelsia pastore sit destituta: Si autem ille sex menses neglexerit, Metropolitanus Provinciæ aliquem ad illam Ecclesiam, præsentabit. Si autem Archiepiscopus Ecclesiam sex Menses destitui sinat, lex regni communis potestatem providendi idoneum pastorem eidem Ecclesiæ concedit Regi tanquam supremo intra Regnum suum, & non Pontifici Romano. *Tempore* E. 3.

Rex non solum Ecclesiasticam personam quamcunque ab Ordinarii jurisdictione eximere, verùm etiam jurisdictionem Episcopalem ipsi concedere potest; ut eo loco constat 17 E. 3. 23.

constat Regem Archiadiacono Richmondiæ olim fecisse.

20 E. 3. *Tit. Excom.* 9. 16 E. 3. *Bre.* 660. 21 E. 3 60. 6 H. 7. 14. *F. N. B.*

Singulæ ædes Religiosæ vel Ecclesiasticæ quarum Rex fundator extitit, ab ipso Rege omni jurisdictione ordinaria sunt exemptæ, & per ecclesiasticam Regis commissionem sunt solummodò visitandæ & corrigendæ.

20 E. 3. *Tit. Excom.* 6.

Abbas Burgi S. Edmundi in Suffolcia diplomate regio ab omni Episcopali jurisdictione exemptus erat.

21 E. 3. *f.* 40.

Qui fuerat præsentatus ad Ecclesiam per Dominum Regem, impeditus fuit per quendam qui impetraverat Bullas à Curia Romana, quapropter carceri perpetuo emancipatus fuit, &c.

22 E. 3. *Lib. Ass. pl.* 75.

Decimas ex locis extra aliquam Parochiã Rex habebit, quoniã cũ illi sit suprema jurisdictio Ecclesiastica, obligatus est sufficientem Pastorem providere, qui curam ejusmodi loci qui intra alicujus Parochiæ limites non comprehenditur habeat. Juxta etiam communes Leges clarum est, quòd nemo jus hæreditarium in decimis habeat, nisi sit Ecclesiasticus aut Ecclesiasticam habeat jurisdictionem.

27 E. 3. 84. *F. N. B. f.* 34.

Rex ratione supremæ suæ Ecclesiasticæ Jurisdictionis præsentabit ad liberas capellas suas (in defectu Decani, &c.) per lapsum. Et *Fitzherbertus* dicit, quod in hac cau-

King had done of ancient time to the Archdeacon of (a) Richmond. (a) Co. Lit. 134. a.

All Religious or Ecclesiastical Houses, whereof the King was Founder, are by the King exempt from ordinary Jurisdiction, and only visitable, and corrigible by the Kings Ecclesiastical Commission. 20 E. 3. Excom. 9. (b) Dav. 46. b. 16 E. 3. 11. tit. Bre. 660. 21 E. 3. 60. 6 H. 7. 14. F. F. B.

The Abbot of Bury in Suffolk was exempted from Episcopal Jurisdiction by the Kings Charter. 20 E. 3. Tit. Excom. 6.

The King presented to a Benefice, and his Presentee was disturbed by one that had obtained Bulls from Rome, for which Offence he was condemned to perpetual Imprisonment, &c. 21 E. 3. 40. f. 40.

Tythes (c) arising in places out of any Parish the King shall have, for that he having the supream Ecclesiastical Jurisdiction, is bound to provide a sufficient Pastor, that shall have the Cure of Souls of that place which is not within any Parish; And by the Common Laws of England it is evident, (d) That no Man unless he be Ecclesiastical, or have Ecclesiastical Jurisdiction, can have Inheritance of Tythes. 22 E. 3. lib. Ass. pl. 75. (c) Seld. decimis 365. (d) Co. Lit. 159. a. 2 Co. 44. a. Cr. El. 512.

The King shall present to his free Chappels (in default of the Dean) by laps in respect of his supream Ecclesiastical Jurisdiction. And Fitzherbert saith, That the King in that case doth pre- 27 E. 3. f. 84. F. N. B. f. 34. f.

(a) Plowd. 498. b.

present by Laps as (a) Ordinary.

30 E. 3. lib. Ass. pl. 19. 12 H. 4. 16. 14 H. 4. 14. 8 H. 6. fol. 3. 35 H. 6. 42. 28 H. 6. 1. 7 E. 4. 14. 12 E. 4. 16. F.N.B. f.64.F. Vid. 9 E.4.f.3. Hereafter f.11. It ought to be determined in the Ecclesiastical Courts in *England*. Apres f. 23. b. 26. a.

An Excommunication under the Popes Bull, is of no force to disable any Man within England, And the Judges said, That he that pleadeth such Bulls, though they concern the Excommunication of a Subject, were in a hard case, if the King would extend his justice against him. If Excommunication being the extream and final end of any Suit in the Court at Rome, be not to be allowed within England, it consequently followeth, That by the ancient Common Laws of England, no Suit for any Cause though it be Spiritual, rising within this Realm, ought to be determined in the Court of Rome; Quia frustrà expectatur eventus, cujus effectus nullus sequitur: And that the Bishops of England are the immediate Officers and Ministers to the Kings Courts.

31 E. 3. Tit. Excom. *6*.

In an Attachment upon a Prohibition, the Defendant pleaded the Popes Bull of Excommunication of the Plaintiff. The Judges demanded of the Defendant, if he had not the Certificate of some Bishop within the Realm, testifying this Excommunication: To whom the Councel of the Defendant answered, that he had not, neither was it as he supposed necessary: for that the Bulls of the Pope under lead were notori-

sa, Rex ut Ordinarius per lapsum præsentat.

Excõmunicatio sub Bulla Papali, nullã habet vim reddendi aliquẽ incapacẽ intra Angliam, & Judices pronunciarunt, quod qui ejusmodi Bullas ad causam suam stabiliendã producit, quanquam erant ad subditũ excõmunicandũ, male cum illo ageretur si Rex summo jure ageret. Si Excommunicatio, quæ summa & suprema est cẽsura & coercio in Curia Romana intra Angliam non sit approbanda, ex consequentia colligitur, quod per antiquas cõmunes Angliæ leges, nulla controversia ulla de causa, licet illa spiritualis, intra regnũ exorta, in Romana Curia dijudicari debeat; *Quia frustra expectatur eventus, cujus effectus nullus sequitur*. Quodque etiam Angliæ Episcopi, sunt immediati officiarii & ministri ad Curias Regis. — 30 *E*. 3. *lib. Ass. pl*. 19. 12 *H*. 4. 16. 14 *H*. 4. 14. 8 *H*. 6. 3. 20 *H*. 6. 1. 35 *H*. 6. 42. 7 *E*. 4. 14. 12 *E*. 4. 16. *Vide* 9 *E*. 4. 3. *inferius*.

In apprehensione ex prohibitione, defendens quidam Bullam Papalem excommunicationis contra Actorem, sive querentẽ produxit: Judices defẽdentem rogarunt, si certificationem ab aliquo intra Regnum Episcopo ad excommunicationem testificandam haberet; Defendẽtis advocati responderunt, quod non haberet neque necessarium esse existimarunt ut haberet, quia Bulla Papalis sub Sigillo — 31 *E*. 3. *Tit. Excom*. 6.

Sigillo plumbeo satis superq; nota erat, & omnibus constaret. Verũ adjudicatũ erat Bullas Papales minime sufficientes esse, quia Curia Regia nullam habere debet rationẽ alicujus excommunications extra Regnũ factæ, & igitur ex Curiæ regula defendens inde suo jure non erat exclusus.

ous enough: But it was adjudged that they were not sufficient, for that the Court ought not to have regard to any Excommunication (a) out of the Realm: And therefore by the Rule of the Court the Plaintiff was not thereby disabled.

(a) Devant 14. b. Co. Lit. 134. a. F.N.B. 64. f.

33 E. 3. *Tit. Ayd de Roy* 103.

Reges sacro oleo uncti, sunt spiritualis jurisdictionis capaces.

Reges (b) sacro oleo uncti, sunt spiritualis Jurisdictionis capaces.

(b) 2 Rol. Rep. 451. Dav. 4. a. 33 E. 3. tit. Aid Roy 103.

31 *Aff. pl.* 20.

Cum Prior Regi debitor est, & Decimas ab alia persona spirituali accipere debet, in ejus est electione de subtractione Decimarum, vel in Curia Ecclasiastica, vel in Scaccario in jus vocare, cum & personæ & res itidem fuerunt Ecclesiasticæ. Quandoquidem enim res mediatè ad Regem spectat, ille in Scaccario perinde, ac in Curia Ecclesiastica in jus vocare potest, & ibi jus de decimis decidatur. *Fitzherbertus* etiam in suo N. B. f. 30. affirmat, quod ante statutum 18 Edwardi 3. cap. 7. jus de Decimis decidendum erat in Curiis temporalibus pro arbitrio agentium; Et per illud statutum sancitum est, ut in Ecclesiastica Curia deciderentur, & temporalis Curia inde erat exclusa. Curiæ etiam quorundam Maneriorum Regis, & aliorum Magnatum, superioribus sæculis testamenta probarunt, & ex 11 H. 7.

38 Aff. pl. 20.

Where a Prior is the Kings debtor, and ought to have Tythes of another spiritual person, he may chuse either to sue for subtraction of his Tythes in the Ecclesiastical Court, (c) or in the Exchequer, and yet the persons and matter also was Ecclesiastical. For seeing the matter by a mean concerneth the King, he may sue for them in the Exchequer as well as in the Ecclesiastical Court, and there shall the right of Tythes be determined. And Fitzherbert in his Nat. Br. f. 30. holdeth, That before the Statute of 18 E. 3. c. 7. that right of Tythes were determinable at the Temporal Courts, at the election of the Party; And by that Statute assigned to be determined in the Ecclesiastical Court, and the Temporal Court excluded thereof: And the Courts of divers Manors of the Kings, and of other Lords in ancient times had the (d) Probates of last Wills and Testaments, and it appeareth by 11 H. 7.

(c) Co. Lit. 149. a. 2 Co. 44 a.

(d) Perk. Sect. 486. 9 Co. 37. b. 2 Rol. 217. 2 Inst. 231. 488. 11 H. 7. 12. b. Br. Testam. 27. 1 Sid. 46. Vaug. 207. Seld. Jurisd. de Testaments 9, 10.

See the Statute of 15 E. 3. c. 6. 31 E. 3. c. 11.

H. 7. f. 12. That Probate of Testaments did not appertain to the Ecclesiastical Court, but that of late time they were determinable there: So as of such causes, and in such manner as the Kings of the Realm by general consent and allowance have assigned to their Ecclesiastical Courts, they have Jurisdiction by force of such allowance.

38 Lib. Ass. pl. 22.

The King did by his Charter translate Canons Secular, into Regular and Religious Persons, which he did by his Ecclesiastical Jurisdiction, and could not do it unless he had Jurisdiction Ecclesiastical.

46 E. 3. Tit. Præmun. 6.

The Abbot of Waltham died in the 45th year of E. 3. and one Nicholas Morris was Elected Abbot, who for that the Abbey was exempt from ordinary Jurisdiction, sent to Rome to be confirmed by the Pope; And because the Pope by his Constitutions had reserved all such collations to himself, he did recite by his Bull, That he having no regard to the Election of the said Nicholas, gave to him the said Abbey, and the Spiritualties and Temporalities belonging to the same, of his spiritual grace, and at the request (as he feigned) of the King of England; This Bull was read and considered of in Council, that is, before all the Judges of England, and it was resolved by them

fol. 12. liquet probationem testamentorum ad Curias Ecclesiasticas non spectasse, sed non ita pridem ibi fuisse decidendam; adeo ut in ejusmodi causis, & eo modo quo regni hujus Reges unanimi consensu & approbatione, Ecclesiasticis Curiis attribuerunt, virtute ejusdem approbationis jurisdictionem habeant.

Vide Statuta 15 E. 3. c. 6. 31 E. 3. c. 11.

Rex suo diplomate Canonicos seculares, in regulares & Religiosas personas transtulit, quod ex jurisdictione sua Ecclesiastica fecit, & minimè facere poterat, nisi jurisdictionem habuisset Ecclesiasticam.

38 Ass. pl. 22.

Abbas Walthamiæ die obiit 45 E. 3 & quidam Nicholaus Morris erat Abbas electus, qui quoniam Abbatia illa ordinaria jurisdictione exempta erat, Romam misit ut à Papa confirmaretur. Quoniam autem Papa ex suis constitutionibus omnes id genus collationes sibi reservasset, in Bulla sua recitavit; Quod ipsa nulla habita ratione ad electionem prædicti Nicholai, dedit ipsi prædictã Abbatiam cum spiritualibus, & temporalibus ad eandem spectantibus ex gratia sua spirituali, ad petitionem (uti finxit) Regis Angliæ. Hac Bulla in Concilio, id est, coram universis Angliæ Judicibus lecta & perpensa erat, & ab

46 E. 3. Tit. Præmunire 6.

ab illis universis pronunciatū est, hanc Bullam esse contra Leges Angliæ, & Abbatē pro impetratione ejusdem esse in Regis misericordia, unde omnes ejus possessiones in Regis manus sunt captæ, ut plenius in eadem causa apparet.

all, that this Bull was against the Laws of England, and that the Abbot for obtaining the same was fallen into the Kings mercy, whereupon all his Possessions were seised into the Kings hands, as more at large by the said Case appeareth.

49 E. 3. Lib. Ass. pl. 8. Cum Abbas Westmonasterii haberet Priorem & Conventum Regularem in lege mortuū, Rex tamen suo diplomate corporationem illā divisit, & fecit Priorem & Conventū corpus distinctum & capax, quod ex se in jus, & vocare & vocari poterat.

Where the Abbot of Westminster had a Prior and Covent, who were regular and mort in Law, yet the King by his Charter did divide that Corporation, and made the Prior and Covent a distinct and capable Body, to sue and be sued by themselves. 39 E. 3. Lib. Ass. pl. 8.

Statutum de 25 E. 3. de Provisoribus. Parliamento Anno Regis Edwardi tertii 25. habito, sancitum est totius Parliamenti consensu, quod tam illi qui provisiones Romæ procurarent, quàm qui eas exequerentur, non essent in Regis protectione, sed eo loco quo hostes Regis haberentur; & qui contra ejusmodi provisores offenderint, contra omnes excuserentur, & nunquàm inde in crimen vocarentur, aut molestarentur. Ex qua lege, quilibet ejusmodi provisorem legitime tanquam professum Regis, & patriæ hostem tollere poterat, tanta & tàm atrocia hæc habebantur flagitia.

At a (a) Parliament holden in the xxv year of King E. III. It was Enacted by consent of the whole Parliament, that as well they that obtained Provisions from Rome, as they that put them in Execution, (b) should be out of the Kings Protection: And that a Man might do with them, as with the Enemies of the King; And he that offendeth against such Provisors in Body, Goods, or other Possessions, should be excused against all People, and should never be impeached or grieved for the same; By which Law every Man might lawfully kill such an Offendor, as a common Enemy against the King and his Country, so hainous were such Offences then holden.

(a) 3 Co. 76. a. 1 Jones 160. Statut. de 25 E. 3. de Provisoribus.
(b) Co. Lit. 130. b.

Statutum de 25 E. 3. Postmodo eodē Edwardi tertii 25 anno, in pleno Parliamento demonstratum erat

Afterwards in the same xxv year of King Edward the III. It was in open Parliament by

Statut. de 25 E. 3.

by the grievous complaints of all the Commons of this Realm, shewed that the Grievances and Mischiefs aforesaid did daily abound, to the great damage and destruction of all this Realm, more than ever were before, viz. That of late the Bishop of Rome, by procurement of Clerks and otherwise, had reserved, and did daily reserve to his collation, generally and specially, as well Archbishopricks, Abbies and Priories, as all other Dignities, and other Benefices of England, which were of the Advowry of People of Holy Church, and gave the same as well to Aliens as to Citizens, and taketh of all such Benefices the first Fruits, and many other Profits, and a great part of the Treasure of the Realm was carried away and dispended out of the Realm, by the Purchasors of such Graces; and also by such privy Reservations, many Clerks advanced in the Realm by their true Patrons, which peaceably holden their Advancements by long time, were suddenly put out; whereupon the said Commons did pray their said Sovereign Lord the King, that since the right of the Crown of England, and the Law of the said Realm was such, that upon the Mischiefs and Damages which hapned to his Realm, he ought and was bound of the accord of his said people, therefore to provide reme- Note.

Communitatis hujus Regni gravissimis querelis, quòd prædicta gravamina & detrimenta, ad hujus Regni maximum damnum & subversionem indies magis magisque quàm unquam antea ingravescerent, viz. Quòd nuper Pontifex Romanus Clericis procurantibus, & aliis, tàm Archiepiscopatus, Abbatias, ac Prioratus, quàm reliquas omnes dignitates, & Angliæ beneficia, quæ ad jus Cleri spectarent, sibi & quotidie reservaret ad suam collationem generatim & speciatim, & eadem tàm exteris quàm indigenis conferret, & ex ejusmodi beneficiis primitias & multa alia emolumenta sibi attraheret, unde per ementes ejusmodi Gracias expectativas magna vis opum ex hoc Regno deportaretur, extraq; Regnum distraheretur, ac etiam hujusmodi occultis reservationibus quamplurimi Clerici per indubitatos patronos promoti, qui pacifice diu sua beneficia tenuerant, ex improviso erant exturbati. Hinc prædicta Communitas Regem supplex rogavit, ut quandoquidem jus Coronæ Angliæ, & Lex Angliæ ejusmodi erat, ut ipse deberet & obligatus esset, ex consensu Communitatis suæ, damnis & detrimentis quæ in Regno acciderunt, prospicere legemq; ferre, ad damna Nota.

na & detrimenta quæ inde profluxerunt evitanda, ut sibi placeret his malis remedium adhibere. Præfatus Rex Edwardus tertius prospiciens hæc damna & detrimenta, & ad Statutum tempore Avi sui Edwardi primi, & causas in eo comprehensas respiciens, quod statutũ vim suam habet, & nunquam ulla in parte antiquatum erat aut abrogatum: Et quandoquidem ille jurejurando obstrictus erat, ad eam ut Regni legem observandam, etsi quadam incuria, & negligentia quidam contrà ierant; Querelas etiam Communitatis suæ in diversis Parliamentis prius habitis perpendens, nigil magis in votis habuit, quam magnis illis damnis & detrimentis quæ inde acciderant, & quotidie Ecclesiæ Anglicanæ accidunt, consulere & mederi, assensu Procerum & Communitatis Regni, ad Dei honorem, Ecclesiæ Anglicanæ & totius Regni sui emolumentum, ordinavit & sanxit, quod libera electio Archiepiscoporum, Episcoporum, & reliquarum dignitatum, & beneficiorum electivorum in Anglia jam inde permaneret eo modo, quo per Regis progenitores fuerint concessa, & aliorum antecessores fundata. Quod

Nota.

Vide 10 E. 3. *f.* 1. *&* 2.

by and Law, for the avoiding the Mischiefs and Damage which thereof came, that it might please him thereupon to ordain Remedy: The said King Edward the III. seeing the Mischiefs and Damages before named, and having regard to the Statute made in the time of his Grandfather King Edward the I. and to the causes contained in the same, which Statute holdeth always his force, and was never defeated nor adnulled in any point: And forasmuch as he was bound by his Oath to see the same to be kept as a Law of his Realm, though that by sufferance and negligence it had been since attempted to the contrary, also having regard to the grievous complaints made to him by his People in divers his Parliaments holden heretofore, willing to ordain Remedy for the great Damage and Mischiefs which had hapned, and daily did happen to the Church of England, by the said cause, by the assent of all the great Men, and the Commonalty of the said Realm, to the honor of God, and profit of the said Church of England, and of all his Realm, did order and establish, that the free Election of Archbishops, Bishops, and all other Dignities and Benefices elector in England, should hold from thenceforth in the manner as they were granted

Devant f. 13. b.

Nota.

Vide 10 *E.* 3. f. 1. & 2.

ed by the Kings Progenitors, and founded by the Ancestors of other Lords, and that all Prelates and other People of Holy Church, which had Advowsons of any Benefices of the Kings Gift, or of any of his Progenitors, or of other Lords and Donors, to do Divine Service, and other charges thereof ordained, should have their Collations and Presentments freely, in the manner as they were enfeoffed by their Donors. And in case that Reservation, Collation, or Provision be made by the Court of Rome, of any Archbishoprick, Bishoprick, Dignity, or other Benefice, in disturbance of the Elections, Collations, or Presentations afore-named; That at the time of the avoidance, that such Reservations, Collations and Provisions ought to take effect, the said King Edward III. and his Heirs, should have and enjoy for the same time Collations to the Archbishopricks, and other Dignities Elective, which be of his Avowry, such as his Progenitors had before that free Election was granted, since that the Elections were first granted by the Kings Progenitors, upon a certain form and condition, as to demand Licence of the King to chuse, and after the Election to have his Royal Assent, and not in other manner; which Conditions not kept, the King ought by reason to resort to his first nature, as

omnes Prælati, & alii ordinis Ecclesiastici, qui jus Patronatus habuerunt in ullis Beneficiis ex dono Regis, aut alicujus progenitorum ejus, vel aliorum Magnatum ad rem Divinam celebrandam, & alia quæ ad eandem pertinent collationes atq; nominationes liberè haberent, eo modo quo à donatoribus data, & donata fuerint. Quod si reservatio, collatio, vel provisio ullius Archiepiscopatus, Episcopatus, dignitatis, vel alterius cujuspiam beneficii per curiam Romanam facta fuerit, ad disturbandum electiones, collationes, aut nominationes antedictas, quòd quandocunq; vacaverint & ejusmodi reservationes, collationes, provisiones, effectum suum sortiri debuerint, prædictus Rex E. III. & hæredes haberent & fruerentur iisdem collationibus ad Archiepiscopatus & alias dignates electivas, quæ sunt ex patronatus sui jure, cujusmodi jus progenitores ejus habuerant, priusquam ejusmodi libera electio concessa fuisset; Quandoquidem electiones sub certa forma & conditione à Regis progenitoribus concessæ fuissent, viz. ut eligendi venia à Rege peteretur, & post electionem Regius assensus adhiberetur, & alio quovis modo; Quæ conditiones cum minimè observatæ

servatæ fuerint, Rex recte ad primam institutionem redire debet, ut plenius ex ipso statuto clarissime patet.

Statutum de 27 E. 3.

Anno 27 ejusdem Regis gravissima querela ab hujus Regni Magnatibus, & Communitate Regi in Parliamẽto exhibita fuit, quod plurimi subditorũ ex Regno evocati essent ad respondẽdum de rebus, quarum cognitio ad Curiã Regis spectabat, & qd' judicia data in eadẽ Curia in aliis Curiis impedita & infirmata essent, in Regis Coronæq; suæ & universi populi sui præjudiciũ & exhæreditationẽ atq; etiã in Cõmunis Legis ejusdem Regni, quæ semper in usu fuerat, subversionẽ; Unde magna & matura deliberatione Magnatum, & aliorũ ex ejus p̃d' Concilio, assensum & cõcordatũ est per Regẽ, Magnates & Cõmunitatẽ, qd' omnes populi sub Regis fide, cujuscunq; loci & cõditionis qui aliquem extra Regnum in jus vocarent, de causa cujus cognitio ad Curiam Regis spectaret, vel de rebus de quibus judicia in Regis Curia data fuerint, aut quivis suum persequerentur in ulla alia Curia, ad infringẽda infirmanda & rescindẽda judicia in Regis Curia data, pœnam *Præmunire* incurrere deberent, ut ex eodem statuto videre est.

by the said Act more at large appeareth.

Statutum de 27 E. 3.

In the 27th year of the Reign of the same King, it was grievously complained to the King in a Parliament then holden, by the great Men and Commons of the Realm, how that divers of the People were and had been drawn out of the Realm, to answer to things whereof the Conusans pertained to the Kings Court; And also that the Judgments given in the same Court, were impeached in other Courts, in prejudice and disherison of the King & of his Crown, and of all the People of his said Realm, and in the undoing and destruction of the Common Law of the same Realm at all times used; And whereupon good deliberation had with the great Men, and others of his said Council, it was assented and accorded by the King and the great Men and Commons aforesaid, that all the People of the Kings allegeance of what condition that they be, which should draw any out of the Realm, in Plea whereof the Conusance pertained to the Kings Court, or of things whereof Judgments were given in the Kings Court, or which did sue in any other Court to defeat or impeach the Judgments given in the the Kings Courts, should incur the danger of Præmunire, as by the said Act appeareth.

Stat. 28 E. 3. cap. 1 & 2.

To nourish Love, Peace and Concord between holy Church and the Realm, and to appease and cease the great hurt and perils, and insupportable losses and grievances that had been done and happened in times past, and that should happen hereafter, if the thing from thenceforth be suffered to pass, because of personal Citations and other that be passed before this time, and commonly did pass from day to day out of the Court of Rome, by feigned and false suggestions and propositions, against all manner of persons of the Realm, upon causes, whose cognisance and final discussing pertained to the King and his Royal Court: And also of impetrations and provisions of benefices and offices of holy Church, pertaining to the Gift, Presentation, Donation, and Disposition of the King, and that other Lay Patrons of this Realm, as of Churches, Chappels and other Benefices appropriated to Cathedral Churches, Abbies, Priories, Chauntries, Hospitals, and other poor Houses, and of other Dignities, Offices, and Benefices occupied in times past and presented by divers and notable persons of the said Realm; For which causes and dispensing whereof, the good ancient Laws, Usages. Customs and Franchises of the said Realm, had been and were greatly appaired, blemished and

28 E. 3. cap. 1 & 2.

Ad mutuum amorem, pacem & concordiam, intra Sacrosanctam Ecclesiam, & Regnum fovendam & confirmandam, necnon ad magna damna, detrimenta intolerabilia, & gravamina amovenda, sedanda & tollenda, quæ superioribus tẽporibus illata fuerant & acciderant, & postea accidere possent (si res quo cepit pergere toleretur) ex citationibus personalibus, & aliis, quæ & superioribus temporibus provenerunt, & indies proveniunt ex Curia Romana per fictas & falsas suggestiones, contra quaslibet hujus Regni personas, de causis quarũ cognitio & finalis discussio, ad Regem & Regiam ipsius Curiam attinet; Ac etiam ex beneficiorum, & Ecclesiasticorum officiorum impetrationibus, provisionibus, quæ ad præsentationẽ, donationẽ & dispositionem Regis spectant, & ad alios in hoc Regno patronos Laicos, utiq; Ecclesiarum, Capellarum & aliorum beneficiorum Ecclesiis Cathedralibus, Abbatiis, Prioratibus, Hospitalibus adnexorũ, aliarumq; Dignitatum, officiorum & beneficiorum, quæ jam antea tenebantur, & ad quæ p̃sentationes factæ fuerint per quosdã eximios hujus Regni viros; Quibus de causis, & earundem dispensa-

pensationibus, cũ bonæ & antiquæ Leges, cõsuetudines, & libertates ejusdẽ Regni fuissent imminutæ, infirmatæ, & cõfusæ, Corona supremi Dñi Regis accisa, ejusq; persona infamia aspersa, Thesaurus & opes Regni deportatæ, incolæ & subditi ad paupertatẽ redacti & divexati, beneficia sanctæ Ecclesiæ direpta & vastata, Divinus cultus, hospitalitas, eleemosynæ, & charitatis opera sublata, Regni Communitas, & laboribus confecta, & bonis exhausta.

Statutum de 38 E. 3. c. 3. Rex in Parliamño Westm̃ habito Octab. Hill. anno 38 Regni, populi sui cõmodis, & trãquillitati cõsulens, quem placida pace & trãquillitate tueri in votis habuit, & Rempublicam administrare secũdum Regni Leges, consuetudines & libertates ut jurejurãdo cum inauguraretur obstrictus erat; progenitorum suorũ vestigiis insistẽs, qui suis tẽporibus salutares Leges, ordinationes, & provisiones, cõtra pdicta gravamina & pericula tulerũt; Quas Leges, ordinationes & provisiones singulas, & alias suo tempore potissimum anno Regni sui 25 & 27 latas, Rex assensu, expressa sententia, & unanimi consensu Ducum, Comitum, Baronũ & Communitatis hujus Regni, atq; aliorũ omnium ad quos hæc spectarũt, salutari & ma-

confounded, the Crown of their Sovereign Lord the King minished, and his Person falsly defamed, his Treasury and Riches of the Realm carried away, the Inhabitants and Subjects of the Realm impoverished and troubled, the Benefices of holy Church wasted and destroyed, Divine Services, Hospitalities, Alms Deeds and Works of Charity withdrawn and set apart, the Commons and Subjects of the Realm in Body and Goods consumed.

The King at his Parliament holden at Westminster in the Utas of Saint Hillary the thirty eighth year of his Reign, having regard to the quietness of his People, which he chiefly desired to sustain in Tranquility and Peace, to govern according to the Laws, Usages and Franchises of his Land, as he was bound by his Oath made at his Coronation, following the ways of his Progenitors, which for their time made certain good Ordinances and provisions against the said grievances and perils, which ordinances and provisions, and all the other made in his time, and especially in the 25th and 27th years of his Reign; The King by the assent and express will and concord of the Dukes, Earls, Barons, and the Commons of this Realm, and of all other whom these things *Statutum de 38 E. 3. c. 3.*

 touched,

touched, by good and meet deliberation and advisement, did approve, accept and confirm, as by the said Act appeareth.

But those which should execute the said good Laws against such capital Offendors, were cursed, reproved and defamed by such as maintained the usurped Jurisdiction of the Bishop of Rome, against which an especial Act of Parliament was made by the King and his whole Realm, prohibiting thereby such Defamations and Reprooks.

tura deliberatione & cõsultatione approbaverunt, acceptaverũt, & cõfirmaverũt, ut ex eodẽ statuto omnibus manifestũ, & testatum est.

Veruntamen illi, qui salutares illas Leges contra tam nefarios delinquẽtes exercerẽt, diris erãt devoti, maledictis violati, & in calumniã rapti ab illis, qui usurpatam Põtificis Romani jurisdictionem propugnabãt; Contra quos speciali statuto Parliamẽtario, ꝑ Regẽ & universum Regnũ facto, ejusmodi maledicta calumniæ & defamationes ꝓhibita fuerũt.

King *Richard* the Second.

12 R. 2. tit. Jurisdiction 18.

AGainst an Incumbent of a Church in England, another sueth a Provision in the Court of Rome, and there pursueth until he recovereth the Church against the Incumbent, and after brought an action of Account against him, as Receiver of divers Sums of Mony, (which in troth were the Oblations and Offerings which the Incumbent had received,) and the whole Court was of Opinion against the Plaintiff, and thereupon he became Nonsuit.

Regnante Richardo *secundo.*

12 R. 2. tit. Jurisdiction 18.

REctorem Ecclesiæ in Anglia, alter in jus vocavit ꝑ ꝓvisionem in Curia Romana, & ibidẽ sectam suam adeo ꝓsecutus est, quousq; in Curia Romana sententia lata fuit cõtra Rectorem; Et postea actionẽ suam de Compoto contra eũdem Rectorem, quasi Retentorẽ diversarum pecuniarum summarũ produxcit; Quæ pecuniæ erant oblationes & obvẽtiones ꝑ Rectorem receptæ, &c. In hoc casu tota Curia sententiam cõtra querentem in actione de compoto proferebat; Super quo querens non ulterius prosecutus est, sed causa cecidit.

Par-

Stat. 16 R. 2. cap. 2.

Nota.

Parliamētaria authoritate hoc anno declaratum erat, quod Angliæ Corona omnibus temporibus adeo libera fuit, ut nulli Regno subdita, sed immediate Deo, & non cuivis alteri subjecta fuerit, quodq; eadem quantum ad Majestatē ejusdē spectat, in nulla re Romano Pontifici submitti debeat, nec Leges aut Statuta hujus Regni ꝑ ipsum antiquari, aut imminui, ad perpetuam Regis ejus Coronā, & Majestatis ejus, & totius Regni subversionem. Ad hæc Regni Communitas in eo Parliamēto affirmanter asseveraverit, quod quæ Romanus Pontifex attētaverit, sunt manifestò contra Regis Coronam, & Majestatis jura, temporibus omnium ejus progenitorum usitata & approbata; Quapropter & ipsi, & universa fidelis Communitas ejusdem Regni, a Rege ejus Corona & Majestate starent in causis præfatis, & aliis quibuscunq; susceptis contra ipsum, ipsius Coronam & Majestatem, in singulis usq; ad mortem. Regem præterea orabāt, & justitiæ nomine obsecrabāt, ut seorsum examinaret singulos Proceres in Parliamēto, tam Spirituales, quam Temporales, & omnes Parliamēti ordines, quid in prænominatis sentirēt, quæ tam aperte Regiæ Coronæ adversabantur,

Stat. 16 R. 2. cap. 5.

Nota.

It is declared by that Parliament, that the Crown of England hath been so free at all times that it hath been in subjection to no Realm, but immediately subject to God, and to none other, and that the same ought not in any thing touching the Regalty of the same Crown, be submitted to the Bishop of Rome, nor the Laws and Statutes of this Realm by him frustrated or defeated at his Will, to the perpetual destruction of the King, his Sovereignty, Crown and Regalty, and of all his Realm: And the Commons in that Parliament affirmed, that the things attempted by the Bishop of Rome, be clearly against the Kings Crown and his Regalty, used and approved in the time of all his Progenitors. Wherefore they and all the liege Commons of the same Realm, would stand with the King and his said Crown, and his Regalty, in the Cases aforesaid, and in all other Cases attempted against him, his Crown, and his Regalty, in all points to live and to dye. And moreover they did pray the King, and him required by way of Justice, that he would examine all the Lords in the Parliament, aswell Spiritual as Temporal severally, and all the States of the Parliament, how they thought of the Cases aforesaid, which were so openly against the Kings Crown, and in

in derogation of his Regality, and how they would stand in the same cases with the King, in upholding the Rights of the said Crown and Regality, whereupon the Lords Temporal so demanded, did answer every one by himself; That the Cases aforesaid were clearly in derogation of the Kings Crown and of his Regality, as it was well known, and had been of long time known, and that they would stand with the same Crown and Regality in those Cases especially, and in all other Cases which should be attempted against the said Crown and Regality in all points, with all their power. And moreover it was demanded of the Lords Spiritual there being, and the procurators of others being absent, their Advice and Will in all those Cases, which Lords, that is to say, the Archbishops, Bishops and other Prelates, being in the Parliament severally examined, making protestations, that it was not their mind to deny or affirm that the Bishop of Rome might not excommunicate Bishops, nor that he might make translation of Prelates after the Law of holy Church, answered and said; That if any Executions or Processes made in the Kings Court, as before were made by any, and censures of Excommunications be made against any Bishop of England, or any other of the

& Majestati Regiæ derogabant; Quomodo etiam in prædictis causis cum Rege concurrerent in Coronæ & Majestatis jure sustentando; Qua de re Domini Temporales interrogati singuli seorsim respōderūt, qd' causæ præd' manifesto tenderent in Regiæ Coronæ & ejusdē Majestatis derogationem, ut explorate cognitū est, & jam diu cognitum erat; Quodq; ipsi omnibus viribus firmiter starent ab eadem Corona & Majestate in causis potissimum prædictis & omnibus aliis, quæcunq; contra eandem Coronam & Majestatem susciperentur. Domini Spirituales ibidē præsentes, & procuratores aliorum qui aberant interrogati erant, quid sentirēt & fieri vellent in causis illis omnibus; Qui Domini, viz. Archiepiscopi, Episcopi, & cæteri Prælati, in Parliamēto seorsim examinati, protestationibus prius factis, qd' non erat ipsis in animo negare aut affirmare, Pontificem Romanum non posse Episcopos excommunicare, aut Prælatos trāsferre juxta sanctæ Ecclesiæ Leges, responderunt & dixerunt; Quod si ullæ executiones vel processus in Curia Regis, ut antea, ab ullo factæ fuerint, & excommunicationis censuræ contra ullum Angliæ Episcopum, vel aliū quemvis

ex

ex fidelibus Regis subditis, qd' ejusmodi mandata executi fuerint. Præterea si ullæ executiones ejusmodi translationum aliquorum Prælatorum prædicti Regni, qui Regi & Regno suo imprimis usui erant & necessarii facti fuissent; vel si prudentes ex ejus Cõcilio evocati sint, & longe a Regno abducti sine assensu ejus, & contra quam voluerit, ita quod opes & thesaurus Regni imminuerentur, ea omnia esse contra Regem ejusq; Coronam, ut in p̄dicta petitione memorabatur; Similiter Procuratores singuli ꝑ se de iisdem rebus examinati, idem in nomine Dominorum suorum responderunt, perinde ac p̄fati Episcopi ꝓnunciaverãt, & respõderant; Quodq; etiam præd' Domini Spirituales, & vellent & deberent stare à Rege in hisce causis, in Corona ejus sarta tecta conservenda, & omnibus aliis causis quæ ad Coronam ejusq; Majestatem spectarunt, ut fide quam Regi debebant obligati fuerant. Unde Rex ex assensu præfato & prædictæ Communitatis petitione statuit & sanxit; Quod si quis in Romana Curia vel alibi ejusmodi translationes, processus, excommunicationis sententias, Bullas, instrumenta, aut alia quæcunque quæ ad Regem Dominum

Kings liege People, for that they had made Execution of such Commandments: And that if any Executions of such translations be made of any Prelats of the same Realm, which Prelats were very profitable and necessary to the King, and to his said Realm; Or that his sage Men of his Councel, and without his assent, and against his Will be withdrawn and eloined out of the Realm; So that the Substance and Treasury of the Realm might be destroyed, that the same was against the King and his Crown, as it was conteined in the Petition before named: And likewise the same Procurators every one by himself examined upon the said matters, did answer and say in the name and for their Lords, as the said Bishops had said, and answered; And that the said Lords Spiritual would and ought to stand with the King in these cases, lawfully in maintaining of his Crown, and in all other cases touching his Crown and his Regality, as they were bound by their Allegeance: Whereupon the King by the assent aforesaid, and at the prayer of his said Commons did ordain and establish; That if any purchase or pursue, or cause to be purchased or pursued in the Court of Rome or elsewhere, any such Translations, Processes and Sentences of Excommunication, Bulls, Instruments or any

any other things which touched the King their Lord, against him, his Crown and his Regalty, or his Realm, as is aforesaid: And they which bring within the Realm, or them receive, or make thereof notification, or any other execution within the same Realm, or without; that they, their notorious Procurators, Maintainers, Fautors, and Councellors, should be put out of the Kings protection, and their Lands and Tenements, Goods and Chattels forfeit to the King, and they be attached by their Bodies if they may be found, and brought before the King and his Council, there to answer to the Cases aforesaid: Or that processe to be made against them by Præmunire facias, as it is ordained in other Statutes of Provisors, and others which do sue in any other Court in derogation of the Regalty of the King, as by the said Act also appeareth.

Co.Lit. 130.a. F.N.B. 169.f.

suum spectarent, contra ipsum ejus Coronam & Majestatem, vel ejus Regnum ut prædictum est procuravit, vel procurari fecerit. Et qui ea in Regnum intulerint, vel receperint, vel publicaverint vel quovis modo in pdicto Regno, vel extra executi fuerint; Qd' ipsi, eorum Notarii, Procuratores, Adjutores, Fautores, Consultores, Regis protectione excluderētur, & eorum terræ tenemēta & bona in Regis potestatē redigerētur, ipsiq; si inveniri possint apprehēderētur, & corā Rege & ejus Cōcilio sisterentur ad respondēdum de pdictis, vel ut processus contra eos fieret per *Præmunire facias*, ut sancitū est in aliis statutis de Provisoribus, & aliis qui in alia Curia ad Regiæ dignitatis derogationem jus suum persequuntur, ut ex eodem statuto plenius patet.

In the Reign of King *Henry* the Fourth.

Regnante Henrico *quarto.*

2 H. 4. f. 9.

It is resolved that the Popes Collector, though he have the Popes Bulls for that purpose, hath no Jurisdiction within this Realm, and there the Archbishops and Bishops, &c. of this Realm are called the Kings Spiritual Judges.

By the ancient Laws Ecclesiastical of this Realm, no

F.N.B. 269. d.

Determinatum est qd' Collector papalis, vigore alicujus Bullæ, nullā intra hoc Regnum habet authoritatem, & ibidē Archiepiscopi, Episcopi, &c. intra hoc Regnum spirituales Judices Regis nuncupantur. *2 H. 4 f. 9.*

Per antiquas Ecclesiasticas hujus Regni Leges, nemo hære- *F.N.B. 269.d. Stat. de 2 H. 4. cap. 15.*

hæreticæ pravitatis, quæ crimen est læsæ Majestatis contra divinum Numen, cõvinci poterat nisi ab Archiepiscopo & universo ejusdem Provinciæ Clero, & inde abjuratus, & postea de integro convictus & condemnatus a Clero ejusdem Provinciæ in Synodo generali; Sed statutum 2 *H*. 4. *c*. 15. authoritatem Episcopo Diocesios hæreticos cõdemnandi tribuit; Quodq; ante statutum illud hæreticus seculari brachio ad concremandum committi non poterat, donec semel abjurasset, & in eandem vel aliã hæresin relapsus fuisset; Unde luce clarius est, quod Rex consensu Parliam̃ti direxit formulas procedendi Curiis Ecclesiastics in hæresios causis, & aliis magis spiritualibus.

Man could be convicted of Heresie, being High Treason against the Almighty, but by the Archbishop and all the Clergy of that Province, and after abjured thereupon, and after that newly convicted and condemned by the Clergy of that Province in their general Council of Convocation: But the Statute of 2 H. 4. cap. 15. doth give the Bishop in his Dioces power to condemn an Heretick: And that before that Statute he could not be committed to the secular power to be burnt, until he had once abjured, and was again relapsed to that, or some other Heresie; Whereby it appeareth that the King by consent of Parliament directed the proceedings in the Ecclesiastical Court in case of Heresie, and other matters more Spiritual.

3 Inst. 40.

This had a resemblance to an Attainder of Treason, wherein there must be first an Indictment by one Jury, and a Conviction by another.

14 *H*. 4. *f*. 37. Papa non potest mutare Leges Angliæ.

The Pope cannot alter the Laws of England. 11 H. 4. 37.

11 *H*. 4. *f*. 69, 76. Judices pronunciarunt, quod Statuta quæ ad Papales provisiones, ad beneficia ex Ecclesiasticorũ hominum patronatu corcendas facta fuerint, eo quod Ecclesiastici in sua justa causa Papalibus provisionibus contradicere non auderent; Adeo ut illa statuta tantum ad Leges communes confirmandas fuerint sancita.

The Judges say that the Statutes which restrain the Popes Provisions to the Benefices of the Advowsons of Spiritual Men, were made for that the Spiritualty durst not in their just cause say against the Popes Provisions: So as those Statutes were made but in affirmance of the Common Laws. 11 H. 4. f. 69, 76.

14 *H*. 4. *f*. 14 *Vide superius* 30 *E*. 3. *lib*. *Ass*. *pl*. 19. Excommunicatio per Papam facta nullam vim in Anglia habet, & eadem signifi-

Excommunication made by the Pope is of no force in England, and the same being certified

14 H. 4. f. 14 Vide 30 E. 3. lib. Ass. pl. 19. before. Vide 13 E. 3. Certificat. 6.

Vide 20 H. 6. 1. 35 H. 6. 42. 7 E. 4. 14. F.N.B. 64. F. Devant 15. b. Apres 26. b. 27. b.

fied by the Pope into any Court in England ought not to be allowed, neither is any Certificate of any Excommunication available in Law, but that is made by some Bishop of England, for the Bishops are by the Common Laws, the immediate Officers and Ministers of Justice to the Kings Courts in Causes Ecclesiastical.

14 H. 4. 14.

If any Bishop do excommunicate any person for a Cause that belongeth not unto him, the King may write unto the Bishop, and command him to assoil and absolve the party.

Statutum de 2 H. 4. c. 3.

If any person of Religion obtain of the Bishop of Rome to be exempt from Obedience Regular or Ordinary, he is in Case of Præmunire, which is an offence as hath been said; Contra Regem, Coronam & Dignitatem suas.

Statutum de 6 H. 4. c. 1.

The Commons did grievously complain to the King, at the Parliament holden in the 6th year of H. 4. of the horrible mischiefs and damnable customs which then were introduct of new in the Court of Rome, that no person Abbot or other, should have provision of any Archbishoprick or Bishoprick which should be void, till he had compounded with the Popes Chamber, to pay great and excessive Summs of

cata per Papam alicui Curiæ in Anglia admitti & approbari non debet, neq; alicujus excommunicationis ejusmuodi significatio in lege vim habet, sed quæ ꝑ aliquem Angliæ Episcopū facta sit; Episcopi enim ꝑ Leges Communes sunt officiarii immediati, & justitiæ administri ad Curias Regias in caussis Ecclesiasticis.

Vide 13 *E.* 3. *tit. Certificat.* 6. 20 *H.* 6. 1. 35 H. 6. 42. 7 *E.* 4. 14. 21 H. 7.

Si Episcopus personam quamcunq; excommunicaverit, pro causa ad eundem Episcopum non spectante; Rex in eo casu scribet hujusmodi Episcopo, ei præcipiens personam illam nodo excommunicationis sic innodatam absolvere.

14 *H.* 4. 14.

Si qua religiosa persona a Pontifice Romano impetraverit, ut ab obedientia regulari eximatur, incurret *Præmunire*, quod est crimen ut jam antea dictum contra Regem ejus Coronam & Dignitatem.

Statutum de 2 *H.* 4. *c.* 3.

In Parliamẽto habito anno 6 *Henrici quarti*, Communitas Regni querelam gravissimam Regi exhibuit de flagitiis atrocibus, & damnãda cõsuetudine, tum temporis in Romanam Curiam recens introductis, viz. Quod nulla persona, Abbas, vel quispiam alius, provisionem alicujus Archiepiscopatus, vel Episcopatus vacantis haberet, priusquam cum Papali

Statutum de 6 *H.* 4. *c.* 1.

pali Camera transegerit, ad magnam vim pecuniæ persolvendam, tam ꝑ primitiis ejusdē Archiepiscopatus vel Episcopatus; quam ꝑ aliis minoribus pēsitationibus in eadem Curia: Et quod ea vis pecuniæ, vel major pars ejus præ manibus solveretur quæ pecuniæ summa duplò vel triplò ad minimum major erat, quam quæ superioribus temporibus in eadem Camera & alibi, ratione ejusmodi Provisionū solvi solebat, unde magna pars opum hujus Regni ad prædictam Curiam asportata fuerat, & futuris temporibus asportāda esset, ad Archiepiscopatus, vel Episcopatus intra ꝑdictum Regnum, & alibi intra Regis dominia exhauriendos, si modo salutare remedium non adhiberetur. Rex ad honerē Dei omnipotentis, tam ad damna & detrimenta Regni, quam ad pericula animarū ipsorum, qui ad Archiepiscopatus & Episcopatus intra Regnum Angliæ, & alibi intra Regis Dominia extra prædictum Regnum propulsanda, concilio & assensu Magnatum Regni sui in Parliamēto statuit & sanxit, quod ipsi & ipsorum singuli, qui ꝑdictæ Cameræ vel alibi, pro ejusmodi primitiis & servitiis majorem vim pecuniæ solverent, quam retroactis tēpo-

Mony, aswel for the First-Fruits of the same Archbishoprick or Bishoprick, as for other less services in the same Court; and that the same sums, or the greater part thereof be paid beforehand, which Sums passed the treble or the double at the least of that that was accustomed of old time to be paid for the said Chamber: And otherwise by the occasions of such provisions, whereby a great part of the Treasury of this Realm had been brought and carried to the said Court, and also should be in time to come, to the great impoverishing of the Archbishops and Bishops within the same Realm, and elsewhere within the Kings Dominions, if convenient remedy were not for the same provided. The King to the Honor of God, aswell to eschew the damage of this Realm, as the perils of their Souls, which owen to be advanced to any Archbishoprick & Bishopricks within the Realm of England, and elsewhere within the Kings Dominions, out of the same Realm, by the advice and assent of the great Men of his Realm in the Parliament, did ordain and establish, that they and every of them that should pay to the said Chamber or otherwise, for such Fruits and Services greater Sums of Mony than had been accustomed to be paid in old time past, they

they and every of them should incur the forfeiture of as much as they may forfeit towards the King, as by the said Act appeareth.

Statutum de 7 H. 4. c. 6.

No Person Religious or Secular, of what estate or condition that he were, by colour of any Bulls containing priviledges, to be discharged of Tythes pertaining to Parish Churches, Prebends, Hospitals, Vicarages purchased before the first year of King Richard the Second, or after not executed, should put in execution any such Bulls to be purchased, or any such Bulls so purchased in time to come, upon the pain of a Præmunire, as by the said Act appeareth.

ribus solvi consuevit, ipsi & ipsorū singuli incurrerēt tantam mulctam, quantam erga Regē mulctari possent, ut ex eodē statuto liquido cōstat.

Nemo Religiosus vel Secularis cujuscunq; loci, vel conditionis, sub obtētu Bullarum quarumcunq; cum privilegiis, ut exonerarētur Decimis ad Ecclesias Parochiales, Præbendas, Hospitalia, Vicariasq; spectantibus, (quæ quidem Bullæ impetratæ fuissēt ante Regis *Edwardi secundi* annum primum, vel postea, & non executioni mandatæ fuerant) exequeretur ullas ejusmodi Bullas ita impetratas, aut in futurum impetrandas, sub pœna *Præmunire*, ut ex eodem statuto clare elucet.

Statutum de 7 H. 4. c. 6.

In the Reign of King *Henry* the Fifth.

Regnante Henrico *quinto.*

Statutum de 3 H. 5. c. 4.

In an Act of Parliament made in the 3d year of King H. 5. It is declared, that whereas in the time of King H. 4. Father to the said King, the 7th year of his Reign, to eschew many Discords and Debates, and divers other mischiefs which were likely to arise and happen because of many provisions then made, or to be made by the Pope, and also of licence thereupon granted by the said late King, amongst other things; It was ordained and established,

In Statuto Parliamētario anno tertio Regis *H.* 5. facto declaratur, quod quādoquidem tempore Regis *H.* 4. patris ejusdem Regis, scilicet anno septimo Regni ejusdem, ad evitanda multas contentiones, lites & varia alia mala probabiliter tunc exoritura ex multis provisionibus per Papam tunc concessis, & concedendis, & etiam ex licentia inde per eundem nuper Regem concessa, inter alia scitum & sancitum erat,

Statutum de 3 H. 5. c. 4.

erat, quod nulla ejusmodi licẽtia aut facultas, ita concessa ante prædictum statutum, aut postea concedenda, vim haberet ad conferendum aliquod beneficium plenum, quod suum habuit incũbentem die quo ejusmodi licentia aut facultas data fuerit; Nihilominus diversæ personæ, quæ papales provisiones ad diversa beneficia in Anglia & alibi, & Regiam licentiam easdẽ provisiones exequendi habẽt, sub prætextu earundem provisionum, facultatum, & acceptationum prædictorum beneficiorum nonnullos suis beneficiis dolo malo excluserunt, quibus longo jam tẽpore gavisi sint, & incubuerint ex collatione indubitatorum Patronorum spiritualium ipsis cogitato & debite facta, ad eorundem incumbentium statum enervandum & disturbandum: Rex summo studio ejusmodi mala propulsandi, statuit & sanxit; Quod omnes Incumbentes cujuslibet beneficii Ecclesiastici, ex patronatu collatione vel præsentatione Ecclesiasticorum Patronorũ, quiete & pacifice iisdem fruerentur, sine ulla inquietatione, molestatione, aut vexatione, sub ejusmodi provisionum facultatum & acceptationum prætextu; Et quod omnes licentiæ, ac facultates ex ejusmodi provisionibus

that no such Licence or Pardon so granted before the same Ordinance, or afterwards to be granted, should be available to any Benefice full of any Incumbent, at the day of the date of such Licence or Pardon granted; Nevertheless divers persons having provisions of the Pope of divers Benefices in England and elsewhere, and Licences Royal to execute the same Provisions, have by colour of the same Provisions, Licences and acceptations of the said Benefices, subtilly excluded divers persons of their Benefices, in which they had been Incumbents by a long season of the collation of the very Patrons Spiritual, to them duly made to their intent, to the final destruction and enervation of the states of the same Incumbents. The King willing to void such mischiefs, hath ordained and established, that all the Incumbents of every Benefice of holy Church, of the Patronage, Collation or Presentation of Spiritual Patrons might quietly and peaceably enjoy their said Benefices, without being inquieted, molested, or any ways grieved, by any colour of such Provisions, Licences and Acceptations; And that all the Licences and Pardons upon and by such Provisions made in any manner, should be void and of no valour; And if any

feel himself grieved, molested or inquieted in any wise from thenceforth by any, by colour of such Provisions, Licences, Pardons or Acceptations, that the same Molestors, Grievors or Inquietors, and every of them, have and incur the pains and punishments contained in the Statutes of Provisors before that time made, as by the said Act appeareth.

ullo modo factæ irritæ sint, & nullius momenti; Quod si quis se ab aliquo divexatum, exagitatũ, aut molestiis affectũ ullo modo jam inde sentiret, sub ejusmodi provisionũ, licentiarũ, facultatũ, aut acceptationũ prætextu, qui ita molestias facesserent, gravamina injicerẽt, aut quietẽ disturbarẽt, ipsorũ singuli pœnã & animadversionẽ quæ in statuto de Provisoribus facto subeant, ut ex eodem statuto plenissime liquet.

Statutum de 2 H. 5. c. 7.

A Statute was made for extirpation of Heresie, and Lollardy, whereby full power and authority was given to the Justices of Peace, and Justices of Assisse, to enquire of those that hold Errors, Heresies or Lollardy, and of their Maintainers, &c. And that the Sheriff or other Officer, &c. may arrest and apprehend them.

(a) Lollardy *a Lolio*: For as Cockle is the destruction of the Corn, so is Heresie the destruction of true Religion.

Statutũ ad extirpãdũ Hæresin, & hæreticã pravitatem factum erat, quo plenaria potestas & authoritas Eirienarchis, & Assisarũ Justiciariis data, inquirẽdi de illis qui errores, hæreses vel hæreticam pravitatẽ defẽdũt, & de eorũ fautoribus, &c. Vicecomes, vel alius officiarius eos apprehendere possit.

Statutum de 2 H. 5. c. 7.

Lollardy dicitur a Lolio, sicut Lolium est pestis terræ sic Hæresis animæ.

Infœlix lolium, & steriles dominantur avenæ. *Virgilius.*
Et careant loliis oculis vitiantibus agri. *Ovidius.*

Infælix lolium & steriles dominantur avenæ. Virgilius.
Et careant loliis occulis vitiantibus agri. Ovidius.

(a) Perperam sane sed potius a Gualtero Lolhard Germanico quodam qui floruit circa annum Domini, 1315. Spelm. Gloss. tit. Lollardia. 3 Inst. 43. Linwood 300.

Statutum de 2 H. 5. c. 1.

The King by consent of Parliament, giveth power to Ordinaries to enquire of the foundation, erection and governance of Hospitals, other than such as be of the Kings Foundation, and thereupon to make correction and reformation according to the Ecclesiastical Law.

Rex assensu Parliamẽtario dat Ordinariis potestatem inquirendi de fundatione, erectione, administratione hospitalium, præterquam eorum quæ sunt ex Regis fundatione, & etiam corrigendi & reformandi juxta legem Ecclesiasticam.

Statutum de 2 H. 5. c. 1.

Regnante

Regnante Henrico *sexto*.

In the Reign of King *Henry* the Sixth.

8 H. 6. f. 3. EXcōmunicatio facta, & significata ꝑ Papā nullā vim habet ad aliquem incapacem in Anglia reddēdum; Et hoc per antiquas Leges communes, priusquā statutū de jurisdictione externa factū erat.

9 H. 6 f. 16. Rex solūmodo potest cōcedere & licētiam dare, fundādi incorporationē spiritualē.

1 H. 7. f. 10. Tēpore Regis *H.6.* Pontifex Romanus Literas scripsit ad derogationē Regis & Majestatis ejus, & Ecclesiastici ne hiscere quidem contra ausi sunt; Verū *Humfridus* Dux Glocestriæ, (scilicet ne perirent) in ignem projecit.

Excommunication (a) made and certified by the Pope, is of no force to disable any Man within England; And this is by the ancient Common Laws before any Statute was made concerning foreign Jurisdiction. 8 H. 6. f. 3. (a) Devant 15. b. 23. b. Apres 27. a.

The (b) King only may grant or licence to found a Spiritual Incorporation. 9 H. 6. f. 16. (b) 4 Co. 107. b. Dyer 81. pl. 64.

In the Reign of King Henry the 6th the Pope writ Letters in derogation of the King and his Regalty, and the Churchmen durst not speak against them; But Humfrey Duke of Glocester for their safe keeping put them into the fire. 1 H. 7. 10.

Regnante Edwardo *quarto*.

In the Reign of King *Edward* the Fourth.

1 H. 7. f. 20. E*Dwardo* quarto regnāte, Pontifex Romanus Priori Sancti Johannis Asylum infra Prioratum suum concessit, hoc disceptatū erat, & Prior sibi vēdicavit; Verum Judices ꝑnunciarunt Papam nullam habuisse potestatem concedēdi aliqua asyli jura in hoc Regno, & igitur legis sententia improbatum erat, & minime permissum.

IN the Reign of King Edward the Fourth, the Pope granted to the Prior of Saint Johns, to have Sanctuary within his Priory, and this was pleaded and claimed by the Prior; But it was resolved by the Judges, that the Pope had no power to grant any Sanctuary within this Realm, and therefore by Judgment of Law the same was disallowed. 1 H. 7. 20.

9 E.4.3. Vide F.N.B.f.44.H. agreeth herewith.

There it appeareth, that the Opinion of the Kings Bench had been oftentimes, that if one Spiritual Person sue another Spiritual Man in the Court of Rome for a matter Spiritual, where he might have remedy before his Ordinary, that is the Bishop of that Dioces within the Realm; Quia trahit ipsum in placitum extra Regnum, incurreth the danger of a Præmunire, an heinous Offence being cōtra legiantiæ suæ debitum in contemptum Domini Regis, & contra Coronam & Dignitatem suas; By which it appeareth, how grievous an Offence it was against the King, his Crown and Dignity, if any Subject, although both the Persons and Cause were Spiritual, did seek for Justice out of the Realm, as though either there wanted Jurisdiction, or Justice was not executed in the Ecclesiastical Courts within the same, which (as it hath been said) was an high Offence, contra Regem, Coronam & Dignitatem suas.

Note.

9 E. 4. 28. Boon's Exam. Leg. Angliæ p. 15. 3 Inst. 114. Hales Pl. Cor. 240.

In the Kings Courts of Record, where Felonies are determined, the Bishop or his Deputy ought to give his attendance, to the end that if any that is indicted and arraigned for Felony do demand the benefit of his Clergy, that the Ordinary may inform the Court of his sufficiency or insufficiency, that is, whether he can read as a Clerk or not, whereof notwithstan-

Eo loci perspicuum est, quod Tribunal Regiū sæpenumero in ea fuit opinione; Quod si aliquis Ecclesiasticus alium Ecclesiasticum in jus vocaverit in Curia Romana de re aliqua Ecclesiastica, cum coram Ordinario qui est Epus diocesios intra Regnum sibi remediū compararet; Quia trahit ipsum in placitum extra Regnum pœnam *Præmunire* incurrit; delictū sane atrox contra legiantiæ suæ debitum, in contēptum Dñi Regis, & contra Coronam & dignitatem suā; Unde patet quantum erat delictū contra Regem, suam Coronam & Dignitatem, si quis subditus (quamvis & persona & causa esset Ecclesiastica) jus suū extra Regnū persequeretur, quasi vel jurisdictio deesset, vel justitia non coloretur in Curiis Ecclesiasticis intra Regnū, qd' ut jam diximus nefariū erat delictum contra Coronam & Dignitatem suam.

9 E.4.3. F.N.B. f.44.H. accordat

Nota.

In Curiis Domini Regis (ad quarū cognitionē crimina feloniæ spectāt) Episcopus ejusve Deputatus interesse & attendere debet, eo nimirum proposito, quod si aliquis ibidē de felonia indictatus & arrectatus existens, clericale privilegium petierit, Ordinarius superinde Curiā illā de habilitate sive inhabilitate hujusmodi delinquentis

9 E. 4. 28.

quẽtis poterit informare, scilicet utrum legere valeat ut Clericus sive non; Et tamẽ Ordinarius in eo casu sentẽtiam suam ut Judex ferre non potest, sed tantũmodo officio Ministri Curiæ Regalis fungitur; Et Judicium utrum hujusmodi ꝑsona sit habilis aut inhabilis, ad Judices Curiæ illius solũmodo spectat; Ac quodcũq; illis ab Ordinario informatũ erit, ipsi Judices super debita examinatione delinquẽtis, sententiã suã cõtra Ordinarii relationẽ ꝓmulgare possint, quia Judices illi à Rege assignati sunt ejusdẽ causæ ꝓprii & soli Judices.

ding the Ordinary is not to judge, but is a (a) Minister to the Kings Court; And the Judges of that Court, are to judge of the sufficiency or insufficiency of the Party, whatsoever the Ordinary do inform them, and upon due examination of the Party, may give Judgment against the Ordinaries Information, for the Kings Judges are Judges of the Cause.

(a) Stanf. Cor. 133. a.

11 E. 4. f. 16. Excommunicatio Papalis nullius est momenti aut authoritatis in Regno Angliæ.

The Popes Excommunication is of no force within the Realm of England. 11 E. 4. f. 16.

Tempore hujus Regis *Ed.* quarti Legatus Papalis Calitium venit, animo in Anglia trajiciẽdi, verum Rex & qui ab ejus consilio, noluerunt permittere ut Angliã ingrederetur, priusquam jusjurãdum præstitisset se nihil cõtra Regem vel ejus Coronã machinaturũ; Quod etiam alteri Legato Papali ipso regnante factum; Et hoc ita relatum est, 1 *H.* 7. *f.* 10.

In the Reign of King Edward the 4th, a Legat from the Pope came to Callis, to have come into England, but the King and his Council would not suffer him to come within England until he had taken an Oath, that he should attempt nothing against the King or his Crown: And so the like was done in his Reign to another of the Popes Legats; And this is so reported in 1 H. 7. f. 10.

Regnante Richardo *tertio.*

In the Reign of King *Richard* the Third.

2 R. 2. f. 22. JUdices pronunciarunt, quod judicium vel excõ-

IT is resolved by the Judges, That a Judgment or Excom- 2 R. 2. f. 22.

communication in the Court of Rome, should not bind or prejudice any Man within England, at the Common Law.

municatio in Curia Romana non obligaret vel præjudicaret cuipiã in Lege Communi in Regno Angliæ.

In the Reign of King *Henry* the Seventh.

Regnante Henrico *septimo.*

1 H. 7. 10. IN the Reign of King Henry the 7th. the Pope had excommunicated all such persons whatsoever, as had bought Allom of the Florentines; And it was resolved by all the Judges of England, that the Popes Excommunication ought not to be obeyed, or to be put in execution within the Realm of England.

Statutum de 1 H. 7. c. 4. In a Parliament holden in the first year of King Henry the 7th for the more sure and like reformation of Priests, Clarks and Religious Men culpable, or by their demerits openly noised of incontinent living in their Bodies, contrary to their order; It was enacted, ordained and established, by the advice and assent of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, and by authority of the same; That it be lawful to all Archbishops and Bishops, and other Ordinaries, having Episcopal Jurisdiction, to punish and chastise Priests, Clarks and Religious Men, being within the bounds of their Jurisdiction, as shall be committed afore them by examination, and

Henrico septimo regnante, Pontifex Romanus sacris interdixit quotquot alumen à Florentinis emissent; Ab omnibus tamen Angliæ Judicibus pronunciatum est, quod Papalis interdictio non obediretur, aut executioni mãdaretur in Regno Angliæ. 1 *H.* 7. 10.

In Parliamento anno primo Regis *Henrici* septimi habito; Ad majorem & efficaciorem Reformationem Sacerdotum, Clericorum & personarũ religiosarum, qui ob incontinentiam vel in crimen vocati, vel vulgo male audierunt contra ipsorũ professionem, statutum ordinatum & sancitum erat, concilio & assensu Dñorum Spiritualium & Temporalium, & Communitatis eodem Parliamẽto, & ejusdẽ authoritate, quod omnes Archiepiscopi & Episcopi, & alii Ordinarii, quibus est jurisdictio Episcopalis, possint ex jure punire & castigare Sacerdotes, Clericos & personas religiosas, intra jurisdictionis ipsorũ limites, quotquot corã illis examina- *Statutum de 1 H. 7. c. 4.*

minatione, vel alia legitima probatione requisita per legem Ecclesiasticam, convicti fuerint adulterii, fornicationis, incestus, vel alicujus incontinentiæ carnalis, eosdem incarcerando, & in carcere detinendo, quamdiu illis pro prudentia visum fuerit juxta delicti gravitatem. Quodq; nullus prædictorum Archiepiscoporum, Episcoporum, aut Ordinariorum in jus vocentur ulla actione de incarceratione injusta; Sed quod in causis prædictis, virtute hujus statuti sint omnino inde exonerati.

lawful proof requisite by the Law of the Church, of Advowtry, Fornication, Incest, or any other fleshly Incontinency, by committing them to ward and prison, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their Trespass; And that none of the said Archbishops, Bishops or Ordinaries aforesaid, be thereof chargeable, of, to or upon any action of false or wrongful imprisonment, but that they be utterly thereof discharged in any of the cases aforesaid, by vertue this Act.

10 *H.* 7. 18. Rex est persona mixta, quia cum Ecclesiasticam, tum Temporalem jurisdictionem habeat.

(a) Rex est persona mixta, because he hath both Ecclesiastical and Temporal Jurisdiction. 10 H. 7. 18. (a) 1 Rol. 657. 2 Co. 44. a. 13 Co. 17. Davis 4. a.

21 *H.* 7. 12. Per leges Ecclesiasticas in hoc Regno approbatas, unus Sacerdos duo Beneficia habere non potest, nec Bastardus sacris initiari; verum Rex Ecclesiastica potestate & jurisdictione quam habet, in utroq; dispensare potest; quia mala sunt prohibita, & non mala per se.

By the Ecclesiastical Laws allowed within this Realm, a Priest cannot have two (b) Benefices, nor a (c) Bastard can be a Priest; But the King may by his Ecclesiastical Power and Jurisdiction, dispence with both of these, because they be mala prohibita, and not mala per se. 11 H. 7. 12. (b) Hob. 147. (c) Hob. 147.

Regnante Henrico *octavo.*

In the Reign of King *Henry* the Eighth.

Statutum de 24 H. 8. 12. Hoc Statutum est declaratorium antiqui Juris, ut ex præcedentibus liquet.

STatuto Parliamẽti habiti 24 Regis *Henrici* octavi facto ꝑ Regẽ, Episcopos 24 Abbates & Priores 29. (totidem enim tunc erant Domini Parliamentarii) per

Statutum de 24 H. 8. c. 12. This Statute is declaratory of the ancient Laws of *England*, as manifestly appeareth by

BY an Act of Parliament made in the 24th year of King Hen. 8. That is to say by the King, 24 Bishops, 29 Abbots and Priors, for so many were then Lords of Parliament,

that which hath been said. See Br. Abr. tit. Presentment al Esglise pl. 12. The Pope was permitted to do certain things within this Realm by Usurpation, and not of right, until the Reign of H. 8.
(a) Devant 8. b.

ment, by all the Lords Temporal and the Commons in that Parliament assembled; It is declared, That where by divers sundry old authentique Histories and Chronicles, it was manifestly declared and expressed, that this Realm of England is an Empire, and so hath been accepted in the World, governed by one supream Head and King, having the Dignity and Royal Estate of the (a) Imperial Crown of the same, unto whom a Body Politique compact of all sorts and degrees of People, divided in terms and by names of Spiritualty and Temporalty, been bound and ought to bear next to God, a natural and humble obedience he being also institute and furnished by the goodness and furtherance of Almighty God, with plenary, whole and entire Power, Preheminence, Authority, Prerogative and Jurisdiction, to render and yield Justice and final determination to all manner of Folk Resiants, or Subjects within this his Realm, in all causes, matters, debates, and contentions, happening to occurr, insurge or begin within the limits thereof, without restraint or provocation to any foreign Princes or Potentates of the World: The Body Spiritual whereof having power when any cause of the Law Divine happened to come in question, or of Spiritual Learning,

omnes Dominos Temporales, & Communitatem in eodem Parliamto declaratum est; Quod cum ex variis Historiis ac Chronicis antiquis & fide dignis clarissime constat hoc Angliæ Regnum Imperium esse, & ita p universum orbem terrarũ habitum fuisse, quod administratum ab uno supremo capite & Rege, qui Imperialis Coronæ ejusdem dignitatem, & Regiam habet Majestatem, cui corpus politicum ex populo cujuscunq; loci & ordinis compactum, nominibus Ecclesiasticorum & Laicorum distinctum obstrictum est; ac naturalem submissamq; obedientiam proxime a Deo præstare debet; Cum ille etiam Divini Numinis benignitate & gratia, instructus & munitus sit potestate, præheminentia, authoritate, prærogativa plenaria integra & omnimoda, ad Justitiam reddendam, & jus decidendũ omnibus subditis & residentibus intra hoc suum Regnum, in omnibus causis, litibus & contentionibus exorientibus & pullulantibus, intra ejusdẽ limites sine prohibitione aut provocatione ad quosvis exteros orbis terrarum Principes aut Monarchas: Cũm corpus item Ecclesiasticum potestatem habeat, quãdo ulla causa Legis Divinæ vel Ecclesiasticæ disciplinæ

Vide Br. Abr. tit. Presentment al Esglise pl. 12. Papa permissus fuit exercere quædam infra hoc Regnum per usurpationem, & non de jure usque tempus H. 8.

ciplinæ in quæstionẽ venit; Quod declaratũ, explicatum, & demonstratũ erat, ꝑ eam prædicti Corporis Politici partem, qui Ecclesiastici vocãtur, tunc vulgo vocitata *Ecclesia Anglicana*, quæ semper talis habita, & etiam agnita, ut scientia integritate & suo numero semper haberetur, & hodie habeatur ex se sufficiẽs & idonea sine exterorũ adminiculo, ad declarãdum & determinãdũ quæcunq; in quæstionem venerint, & ad administrandum omnia munia, quæ ad Spiritualem ordinem spectant; Quæ ut quam cõmodissime & recte administrentur, & ipsi à corruptione & prava affectione deterreãtur, Regis progenitores illustrissimi, & Procerum hujus Regni antecessores, prædict' Ecclesiam Anglicanã cum honore, tum possessionibus satis superq; dotarunt; Leges etiã Temporales ad terrarum & bonorum ꝓprietatem decidendam, & ad populum hujus Regni in unitate, pace, sine prædatione & expilatione conservãdum administrabãtur, & executioni mandabãtur per diversos Judices & ministros alterius partis præfati corporis Politici, quæ Temporalitas appellatur, & utriusq; authoritates & jurisdictiones in debita justitiæ administratione mutuò con-

That it was declared, interpreted and shewed by that part of the said Body Politique, called the Spiritualty, then being usually called the English Church, which always had been reputed and also found of that sort, that both for Knowledge, Integrity and sufficiency of number, it had been always thought, and was also at that hour sufficient and meet of it self, without the intermedling of any exterior person or persons, to declare and determine all such doubts, and to administer all such Offices and Duties, as to the Rooms Spiritual did appertain; For the due administration whereof, and to keep them from corruption, and sinister affection, the Kings most noble Progenitors and the Ancestors of the Nobles of this Realm, did sufficiently indow the said Church, both with honour and possessions; And the Laws Temporal for trial of property of Lands and Goods, and for the conservation of the People of this Realm in Unity and Peace, without ravin or spoil, was, and then was administred, adjudged and executed by sundry Judges and Ministers of the other part of the said Body Politique called the Temporalty, and both their Authorities and Jurisdictions did conjoyn together in the due administration of Justice, the one to help the other: And where-

whereas the King, his most noble Progenitors, and the Nobility and Commons of the said Realm, at divers and sundry Parliaments, as well in the time of King Edward the First, Edward the Third, Richard the Second, Henry the Fourth, & other noble Kings of this Realm, made sundry Ordinances, Laws, Statutes and Provisions, for the entire and sure conservation of the Prerogatives, Liberties and Preheminences of the said imperial Crown of this Realm, and of the Jurisdiction Spiritual and Temporal of the same, to keep it from the annoyance as well of the See of Rome, as from the authority of other foreign Potentates, attempting the diminution or violation thereof, as often and from time to time as any such annoiance or attempt might be known or espied; And notwithstanding the said good Statutes and Ordinances made in the time of the Kings most noble Progenitors, in preservation of the Authority and Prerogative of the said imperial Crown as is aforesaid; yet nevertheless sithence the making of the said good Statutes and Ordinances, divers and sundry inconveniences and dangers, not provided for plainly by the said former Acts, Statutes and Ordinances, have risen and sprung by reason of Appeals sued out of this Realm

currerunt. Quandoquidem etiã Regis Progenitores sereniſſimi, Regniq; Proceres, & Communitas, variis & diverſis Parliamentis temporibus Regis *E.* 1. *E.* 3. *R.* 2. & *H.* 4. & aliorum ſereniſſimorum hujus Regni Regum, varias ordinationes, leges, ſtatuta & proviſiones ſanxerint, ad ſolidam & ſalutarem prærogativarum, libertatũ, præheminentiarum p̃fatæ Coronæ Imperialis hujus Regni, & Juriſdictionum Spiritualium & Temporalium ejuſdem conſervationem, ut defenderetur tam à detrimentis quæ à ſede Romana imminebant, quam ab authoritate aliorũ Principum exterorũ, qui eandem imminuere aut violare machinarentur, quoties ſingulis temporibus ejuſmodi detrimẽta aut machinationes proſpicerentur aut detegerentur; Quamvis autem ſtatuta illa ſalutaria & ordinationes temporibus Sereniſſimorum Progenitorum Regis, ad authoritatem & prærogativã præfatæ Coronæ Imperialis firmãdam facta fuerint, ut jam antea dictũ; Nihilominus ex quo illa facta fuerint, quãplurima incommoda & pericula non plane proviſa in ſuperioribus illis ſtatutis & ordinationibus pullularint per Appellationes ad ſedem Romanam in cauſis Teſtamentariis,

tariis, Matrimonialibus, Divortiis, jure Decimarum, oblationibus & obventionibus, non solum ad perturbationem, vexationem & impensas Regiæ celsitudinis, & quamplurimorum ejus subditorum & residentium in hoc Regno; Verumetiam ad magnam protractionem & impeditionem in causis illis vere & brevi tēpore decidendis. Quoniam qui ad Romanam Curiam appellarunt, id plerunq; fecerunt ad justitiā ꝓtelādam; Cumq; tantum erat intervallum inter hoc Regnum & Romam, ut necessariæ probationes ex certa causæ scientia tam perfecte haberi, aut testes tam recte examinari non possent, quam intra hoc Regnum; Usq; adeo, ut qui illis appellationibus divexati fuerint, nullum plerunq; remedium suis malis invenerint. Unde Rex, Regni Proceres, & Cōmunitas, perpendentes magnas enormitates, pericula, procrastinationes, & detrimenta, tam suæ Celsitudini, quam suis Proceribus, subditis, & intra Regnum suū residentibus in prædictis causis Testamentariis, Matrimonialibus, divortiis, decimis, oblationibus & obventionibus indies exoriētur; Regio suo assensu & Dominorum Spiritualium ac Temporalium, necnon Communitatis con-

to the See of Rome, in Causes Testamentary, Causes of Matrimony and Divorces, right of Tithes, Oblations and Obventions, not only to the great inquietation, vexation, trouble, costs and charges of the Kings Highness and many of his Subjects and Resiants in this his Realm, but also to the great delay and let to the true and speedy determination of the said Causes: Forasmuch as the parties appealing to the said Court of Rome, most commonly did the same for delay of Justice; And forasmuch as the great distance of way was so far out of this Realm, so that the necessary proofs nor the true knowledge of the Cause could neither be so well known, or the Witnesses there so well examined, as within this Realm; So that the parties grieved by means of the said Appeals, were most times without remedy: In consideration thereof, the King, his Nobles and Commons considering the great enormities and damages, long delays and hurts that as well to his Highness, as to his said noble Subjects Commons and Resiants of this his Realm, in the said Causes Testamentary, Causes of Matrimony and Divorces, Tithes, Oblations, and Obventions did daily ensue; did therefore by his Royal assent, and by the assent of the Lords Spiritual and Temporal, and the Commons in

in that Parliament assembled, and by authority of the same, enact, establish and ordain; That all Causes Testamentary, Causes of Matrimony and Divorces, rights of Tithes, Oblations and Obventions, the knowledge whereof by the goodness of Princes of this Realm, and by the Laws and Customs of the same, appertained to the Spiritual Jurisdiction of this Realm, then already commenced, moved, depending, being, happening, or hereafter coming in contention, debate or question within this Realm, or within any of the Kings Dominions or Marches of the same, or elsewhere, whether they concern the King, his Heirs or Successors, or any other Subjects or Resiants within this Realm, of what degree soever they be, should be from thenceforth heard, examined, discussed, clearly, finally and definitively adjudged and determined within the Kings Jurisdiction and Authority and not elsewhere, in such Courts Spiritual and Temporal of the same, as the natures, conditions and qualities of the Cases and Matters aforesaid in contention or thereafter hapening in contention should require, without having any respect to any custom, use or sufferance in hinderance, let or prejudice of the same, or to any other thing used or suffered to the contrary there-

This also is declaratory of the ancient Law, as it appeareth both by 9 E. 4. 3. Fitz. N.B. 44. and many other Cases and Statutes abovesaid.

sensu in pleno Parliamento sciverunt, sanxerunt, & statuerunt; Qd' omnes causæ Testamentariæ, Matrimoniales, divortia, jus decimarum, oblationum & obventionum, quorum cognitio ex beneficētia Principum hujus Regni, & ex ejusdem legibus & consuetudinibus ad Spiritualem hujus Regni Jurisdictionem spectarūt, tunc exortæ & dependētes, exorituræ in posterum, controversæ aut controvertēdæ in hoc Regno, vel in ullis Regis Dominiis, aut eorundem limitibus vel alibi, sive ad Regem ipsum, ejus hæredes vel successores, vel quemvis alium subditorum, aut intra hoc Regnum residentium, cujuscunq; loci vel ordinis spectent, jam inde audiātur examinētur, disceptētur, clare finaliter & definitive adjudicentur & determinentur, intra Regis jurisdictionem & authoritatem nec alibi, in ejusmodi Curiis Ecclesiasticis & Temporalibus ejusdem, juxta causarū quæ sunt controversæ & controvertendæ naturam, conditiones & qualitates, nulla habita ratione cujuscunq; consuetudinis aut tolerationis, vel rei in contrarium usitatæ aut toleratæ in earundem obstaculum, impedimētum, aut præjudiciū, quocunq; alio modo quibuscunq; personis quovis pacto.

Hoc est etiam declaratorium antiqui Juris, ut ex 9 E. 4. 3. & Fitz. N. B. f. 44. superius constat.

pacto; Quibuscunq; exteris inhibitionibus, appellationibus, restrictionibus, judiciis vel ullis aliis processibus vel impedimentis cujuscunq; naturæ, nominis, qualitatis, fuerint à Sede Romana, aut quibuscunque Curiis exteris aut orbis terrarum Principibus, aut ex hoc Regno aut Regis Dominiis, aut eorundem limitibus ad sedem Romanam, vel ad alias quascunque Curias exteras, aut Principes, ad ejusdem obstaculum aut impedimentum ullo modo obstantibus, ut ex eodem Statuto clare elucet.

Statutum de 25 H. 8. c. 21.

Ex Statuto Parliamẽtario anno 25 *Henrici Octavi*, per Regem, Dominos Spirituales, Temporales, ac Communitatem in Parliamento conveniẽtes declaratum est; Quod neq; Rex, sui hæredes, successores hujus Regni Reges, neq; ulli subditi hujus Regni, aut aliorum ejus dominiorum quorumcunq; jam inde peterent à Pontifice Romano, vel sede Romana, vel authoritate ejusdem, vel alicujus Prælati hujus Regni, vel ab aliqua persona sive personis, qui inde authoritatem habent, aut prætẽdunt venias, dispensationes, compositiones, facultates, concessiones, rescripta, delegationes, aut alia instrumẽta aut scripta cujus-

of, by any other manner person or persons, in any manner of wise; Any foreign Inhibitions, Appeals, Sentences, Summons, Citations, Suspentions, Interdictions, Excommunications, Restraints, Judgments or any other Process or Impediment, of what natures, names, qualities or conditions soever they be from the See of Rome, or any other foreign Courts or Potentates of the World, or from and out of this Realm, or any other the Kings Dominions or Marches of the same, to the See of Rome, or to any other foreign Courts or Potentates, to the let or impediment thereof in any wise notwithstanding, as by the said Act appeareth.

Statutum de 25 H. 8. c. 21. This was also declaratory of the ancient Law, as by that which hath been said appeareth.

By an Act of Parliament in 25 H. 8. It is declared by the King, the Lords Spiritual and Temporal, and the Commons in that Parliament assembled; That neither the King his Heirs nor Successors Kings of this Realm, nor any his Subjects of this Realm, nor of any other his Dominions, should from thenceforth sue to the said Bishop of Rome, called the Pope, or to the See of Rome, or to any person or persons, having or pretending any authority by the same, for Licences, Dispensations, Impositions, Faculties, Grants, Rescripts, Delegacies, or any other Instruments or Writings, of what kind, name, nature or quality soever they

they be of, for any cause or matter, for the which any Licence, Dispensation, Composition, Faculty, Grant, Rescript, Delegacy, Instrument, or other Writing, theretofore had been used and accustomed to be had and obtained at the See of Rome, or by authority thereof, or of any Prelate of this Realm; nor for any manner of other Licences, Dispensations, Compositions, Faculties, Grants, Rescripts, Delegacies, or any other Instruments or Writings, that in causes of necessity might lawfully be granted, without offending of the holy Scripture and Laws of God; But that from thenceforth every such Licence, Dispensation, Composition, Faculty, Grant, Rescript, Delegacy, Instrument, and other Writing afore named and mentioned, necessary for the King, his Heirs and Successors, and his and their People and Subjects, upon due examination of the causes and qualities of the persons procuring such Dispensations, Licences, Compositions, Faculties, Grants, Rescripts, Delegacies, Instruments or other Writings, should be granted had and obtained from time to time within this his Realm, and other his Dominions, and not elsewhere, in manner and form following, and not otherwise, that is to say, The Archbishop of Canterbury for the time being, and

cunq; generis, nominis, naturæ, aut qualitatis, ulla de causa vel re, pro qua ulla venia, dispensatio, compositio, facultas, concessio, rescriptum, delegatio, instrumētum, aut aliud scriptum, quæ hactenus usitata fuerant, & à sede Romana impetrari consueverāt. Neq; pro quibuscunq; aliis veniis, dispensationibus, compositionibus, facultatibus, concessionibus, rescriptis, delegationibus vel aliis quibuscunq; instrumētis aut scriptis, quæ necessitatis causa ex jure, sine sacrarum literarum aut legum divinarum præjudicio concedi poterāt; Sed qd' jam inde quælibet ejusmodi venia, dispēsatio, compositio, facultas, concessio, rescriptum, delegatio, instrumentum, aut alia scripta prænominata & memorata Regi, suis hæredibus & successoribus, subditisq; suis, examinatione debita causarū & qualitatum eorū, qui ejusmodi dispensationes, venias, compositiones, facultates, cōcessiones, rescripta, delegationes, instrumēta vel alia scripta procurant, concederentur, haberentur & impetrarētur, deinceps intra hoc suum Regnū, & alia sua dominia & non alibi, juxta formam quæ hic subjicitur & non aliter, viz. Archiepiscopus Cantuariensis qui pro tempore fuerit, & ejus suc-

successores deinceps potestatem & authoritatem habeāt, prout ipsis visum fuerit dandi, concedendi & disponēdi, per instrumentum sub ejusdem Archiepiscopali Sigillo Regi, & ejus hæredibus & successoribus hujus Regni Regibus, tam omnimodas ejusmodi licētias, venias, dispensationes, compositiones, facultates, concessiones, rescripta, delegationes, instrumenta, & quævis alia scripta de causis sacris scripturis & divinis legibus non contradicentibus, quæ hactenus impetrari solita sunt per Regem & serenissimos progenitores, vel quemvis illorum subditum a sede Romana vel a quacunq; persona, authoritate ejusdem, nec non quaslibet alias venias, dispensationes, facultates, compositiones, concessiones, rescripta, delegationes, instrumenta & quævis alia scripta, quæ in ejusmodi causis & rebus singulis, ad Regis suorum hæredum & successorum, honorem & securitatem, hujusq; Regni opulentiam & emolumentum sint consentanea & necessaria; Ita tamen, quod præfatus Archiepiscopus aut ejus successores, nullo modo ulla de causa aut re, divini Numinis legibus repugnante, aliquam dispensationem, veniam, rescriptū, aut quodvis aliud scriptum prius me-

his Successors should have power and authority from time to time by their discretions, to give, grant and dispose by an Instrument under the Seal of the said Archbishop unto the King, and unto his Heirs and Successors Kings of this Realm as well all manner such Licences, Dispensations, Compositions, Faculties, Grants, Rescripts, Delegacies, Instruments, and all other Writings, for Causes not being contrary or repugnant to the holy Scriptures and Laws of God, as theretofore had been used, and accustomed to be had and obtained by the King, or any his most noble Progenitors, or any of his or their Subjects, at the See of Rome, or any person or persons by authority of the same, and all other Licences, Dispensations, Faculties, Compositions, Grants, Rescripts, Delegacies, Instruments and other Writings, in, for and upon all such Causes and Matters as should be convenient and necessary to be had for the Honor and surety of the King, his Heirs and Successors, and the wealth and profit of this his Realm, so that the said Archbishop or any his Successors, in no manner wise should grant any Dispensation, Licence, Rescript, or any other Writing before rehearsed, for any Cause or Matter repugnant to the Law of Almighty God, as by the said Act also ap-

appeareth. If it be demanded what Canons, Constitutions, Ordinances, and Sinodals Provincial are still in force within this Realm, I answer that it is resolved and enacted by authority of Parliament; That such as have been allowed by (a) general consent and custom within the Realm, and are not contrariant or repugnant to the Laws, Statutes and Customs of this Realm, nor to the damage or hurt of the Kings Prerogative Royal, are still in force within this Realm, as the Kings Ecclesiastical Laws of the same. Now, as Consent and Custom hath allowed those Canons; So no doubt by general consent of the whole Realm, any of the same may be corrected, inlarged, explained or abrogated. For example, there is a Decree that all Clerks that have received any manner of Orders, greater or smaller, should be exempt pro causis criminalibus before the Temporal Judges; This Decree had never any force within England: First, for that it was never approved and allowed of by general consent within the Realm. Secondly, it was against the Laws of the Realm, as it doth appear by infinite Presidents. Thirdly, it was against the Prerogative and Sovereignty of the King, that any Subject within this Realm should

(a) Co. Lit. 344. a.

This appeareth by the resolution of all the Judges in 7 H. 8. Lib. Keylw. fol. 18. And this was long before any Act of Parliament was made against foreign Jurisdiction by King *Henry* the 8*th*.

moratum concedat, ut ex eodem statuto clarissime patet. Si quis quærat, qui Canones, constitutiones, ordinationes, & Synodi Provincialis vires intra hoc Regnum habeant; Respondeo, Parliamētaria authoritate judicatū & sancitum esse; Quod quæ generali cōsensu & consuetudine intra hoc Regnum approbantur, & Regni Legibus, Statutis & consuetudinibus non adversantur, neq; Regiæ prærogativæ fraudi sunt, vim suam & virtutem intra hoc Regnum habēt, ut ejusdem Regiæ Leges Ecclesiasticæ. Cum autem, ut consensus & consuetudo hos Canones comprobaverint, ita procul dubio generali totius Regni consensu quivis eorum Canonum corrigi, adaugeri, explicari, aut abrogari possit, verbi gratia; Decretum extat, quod singuli Clerici qui sacris ullo modo sunt initiati pro causis criminalibus coram Judice temporali exempti essent; Hoc decretum, nullas in Anglia vires habuit. Primum, quia nunquam generali consensu in hoc Regno acceptum & approbatum erat. Secundo, quod Regni Legibus adversabatur, ut ex innumeris exemplis luce clarius est. Tertio, quod cōtra Regiam Prærogativam & Majestatē erat, quod aliquis subditus intra hoc

Ita adjudicatum est 7 H. 8. *Lib. Keilway fol.* 181.

hoc Regnum Legibus hujus Regni non subjaceret.

not be subject to the Laws of this Realm.

Regnante Elizabetha.

In the Reign of Queen *Elizabeth.*

Statutum de anno primo Reginæ Eliz.

STatuto Parliamentario præfato (ex quo causa principalis tunc controversa partim depēdet) sancito anno primo Regni *Elizabethæ* declaratum est; Quòd cùm regnāte *Henrico Octavo* variæ leges salutares, & statuta lata & sancita erant, tam ad extirpandam & penitus tollendam, omnimodam usurpatam & exteram potestatem & authoritatem ex hoc Regno, & aliis ejus Dominiis & territoriis; quam ad restituendā & aduniendam antiquam Jurisdictionē, authoritatē, superioritatem & præheminentiā hujus Regni Coronæ Imperiali, quæ de jure ad eandem spectant & pertinēt; unde ab anno 25 ejusdē Regis *Henrici octavi* subditi hujus Regni devotissimi, ordine & recte in officio continebātur, & quamplurimis magnis & intollerandis expensis & molestiis liberati fuerint, quibus antea injuste oppressi & cōflictati fuerint, ꝑ potestatem & authoritatē exterā eo usq; usurpatam; Utq; omnimoda usurpata & extera potestas, authoritasque Spiritualis & Temporalis, in perpetuum exter-

The Statute of the 1st of Queen *Eliz.*

BY the said Act of Parliament (whereupon the principal Case then in question partly dependeth) made in the first year of the Reign of the late Queen Elizabeth, it is declared, That where in the time of the Reign of King Henry the 8th, divers good Laws and Statutes were made and established, aswel for the utter extinguishment and putting away of all usurped and foreign powers and authorities of this Realm, and other her Dominions and Countries, as also for the restoring and uniting to the imperial Crown of this Realm, the ancient Jurisdiction, Authorities, Superiorities and Preheminences to the same of right belonging and appertaining, By reason whereof her most humble Subjects from the 25th year of the said King Henry the 8th were continually kept in good order, and were disburdened of divers great and intollerable charges and vexations, before that time unlawfully taken and exacted by such foreign power and authority, as before that was usurped; And to the intent, that all usurped and foreign Power and Authority, Spiritual and Temporal, might for

for ever be clearly extinguished, and never be used or obeyed within this Realm, or any other her Dominions or Countries; It was by the authority of that Parliament enacted; That no foreign Prince, Person, Prelate, State or Potentate, Spiritual or Temporal, should at any time after the last day of that Session of Parliament use, enjoy or exercise any manner of Power Jurisdiction, Superiority, Authority, Preheminence or Priviledge, Spiritual or Ecclesiastical within this Realm, or within any other the Queens Dominions or Countries, that then were, or hereafter should be, but from thenceforth the same should be clearly abolished out of this Realm, and all other her Dominions for ever; Any Statute, Ordinance, Customs, Constitutions, or any other matter or cause whatsoever to the contrary in any wise notwithstanding: And it was then also established and enacted by the Authority of that Parliament, that such Jurisdictions, Priviledges, Superiorities and Preheminences, Spiritual and Ecclesiastical, as by any Spiritual or Ecclesiastical Power or Authority, had heretofore been or might lawfully be exercised or used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and of all

minaretur, & nunquam in hoc Regno, vel aliis ejus Dominiis aut territoriis sit in usu, aut observetur; Authoritate ejusdē Parliamenti scitū & sancitū erat; Quod nullus exterus Princeps, Prælatus, Status, vel Dynasta Spiritualis aut Tēporalis, à postremo die sessionis hujus Parliamēti, ulla potestāte & jurisdictione, superioritate, authoritate, præheminentia, aut privilegio Spirituali aut Ecclesiastico intra hoc Regnum, aut alia Reginæ Dominia aut territoria, unquam uteretur, frueretur, aut eadē exerceret; Sed quod deinceps eadē in perpetuum ex hoc Regno, & aliis ejus Dominiis in æternum exterminarentur, quocunq; statuto, ordinatione, consuetudine, constitutione, aut re quavis alia non obstante. Eadem etiam authoritate Parliamentaria scitum & sancitum erat, quod ejusmodi jurisdictiones, privilegia, superioritates, & præheminentiæ Spirituales & Ecclesiasticæ, quæ per aliquam Spiritualem vel Ecclesiasticam authoritatem hactenus in usu essent, vel de jure esse possent ad visitationem Ecclesiastici status spiritualium, atq; ad ejusdem etiam status & ejusmodi personarum, atque etiam omnium errorum, hæresium, schismatum,

tum, abusuum, offensarum, contemptuum, & enormitatum reformationem, coertionem & correctionē, Imperiali hujus Regni Coronæ adunirentur & adnecterentur. Quodq; Regina, hæredes & successores hujus Regni Reges & Reginæ, virtute hujus statuti plenariam potestatem & authoritatem haberent p̄ Literas Patentes sub Magno Angliæ Sigillo, assignandi, nominandi & authoritate instruendi, quando & quoties & quamdiu, Reginæ, hæredibus suis, vel hujus Regni successoribus, visum fuit ejusmodi personam aut personas nativas, ad exercēdum & exequendum sub p̄dicta Regina, hæredibus suis vel successoribus, omnimodas jurisdictiones, privilegia & præheminētias quovis modo ad aliquam Spiritualem vel Ecclesiasticam jurisdictionē pertinentes intra hæc Angliæ & Hiberniæ Regna, aut quævis alia ipsius dominia vel territoria; Atq; etiam ad visitādum, reformādum, ordinādum, corrigendum, emendandū, omnes errores, hæreses, schismata, abusus, offensas, contemptus, & enormitates quascunq; quæ Spirituali vel Ecclesiastica aliqua potestate, authoritate vel jurisdictione, reformari, ordinari, corrigi, coerceri, vel emendari legitime

manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts, and Enormities, should for ever by authority of that Parliament, be united and annexed to the Imperial Crown of this Realm. And that the Queen her Heirs and Successors, Kings or Queens of this Realm, should have full power and authority by virtue of that Act, by Letters Patents under the great Seal of England, to assign, name and authorise, when and as often as the Queen, her Heirs or Successors should think meet and convenient, and for such and so long time as should please the Queen, her Heirs or Successors, such person or persons being natural born Subjects to the Queen, her Heirs or Successors, as the said Queen, her Heirs or Successors should think meet to exercise, use, occupy and execute under the said Queen, her Heirs and Successors, all manner of Jurisdictions, Privileges and Preheminences, in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction within these Realms of England and Ireland, or any other her Dominions or Countries, and to visit, reform, redress, order, correct and amend all such Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities whatsoever, which by any manner Spiritual or Ecclesiastical

Ecclesiastical Power, Authority, or Jurisdiction, could or might lawfully be reformed, ordered, redressed, correcteD, restrained or amended to the pleasure of Almighty God, the encrease of virtue, and the conservation of the peace, and the unity of this Realm; And that such person or persons so to be named, assigned, authorised and appointed by the said Queen, her Heirs or Successors, after the said Letters Patents, to him or them made and delivered as is aforesaid, should have full Power and Authority by virtue of that Act, and of the said Letters Patents under the said Queen, her Heirs or Successors, to exercise, use and execute all the Premisses, according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding, as by the said Act also appeareth.

possint ad Divini Numinis gloriam, virtutis incrementum, & pacis unitatisq; in hoc Regno cōservationem. Porro qd' ejusmodi persona vel personæ nominādæ, assignandæ, authoritate instruendæ & instituendæ ꝑ præfatam Reginam, hæredes vel successores, postquam prædictæ Literæ Patentes ipsi fuerint cōfectæ, & ipsi vel ipsis in manus traditæ, ut jam dictum est, virtute ejusdem Statuti & Literarum Patentiū, plenariam potestatem & authoritatem haberēt exercendi & exequendi omnia præmissa sub ꝑdicta Regina, hæredibus vel successoribus, juxta ꝑdictarum Literarum Patentium tenorem & sententiam, quavis re aut causa in contrarium non obstante, ut ex eodem statuto est etiam perspicuum.

12 Eliz. Reg. Dyer. It was adjudged in the Court of Common-Pleas by Sir James Dyer, Weston and the whole Court, That a Dean or any other Ecclesiastical person may resign, as (a) divers did to King Edward the 6th, for that he had the authority of the supream Ordinary.

(a) Bulstr. 4.

12 *Eliz. Reg. Dyer.* De Cōmunium Placitorū Tribunali ꝑ Dñum *Jacobum Dyer*, *Weston* & universam Curiā ꝓnunciatū erat; Qd' Decanus vel quævis alia persona Ecclesiastica Regi possit resignare, (ut nonnulli Rege *Edw.* 6. resignarunt) eo quod supremi Ordinarii potestatem habuerit.

From the 1 until the 11 year of the late Queen Eliz. Reign no person of what perswasion of Christian Religion soever, at any time refused to come to the publick Divine Service, celebra-

Ab anno Regni Reginæ *Elizabethæ* primo usque ad undecimum, nemo quacunque fuerit de Christiana Religione persuasione, ad rem Divinam in Anglicana

glicana Ecclesia publice celebratam, & in sacrosancto & certissimo Dei verbo fundatam, & publica authoritate intra hoc Regnū cōfirmatam accedere recusavit. Postquā autem *Pii Quinti* Bulla cōtra ꝑdictam Reginā, anno Regni undecimo publicata fuerat, continens (inter alia quæ nimis longum est ꝑ nostro instituto jam percurrere) hæc ipsissima verba; Pius *Episcopus, servus servorum Dei, &c. Missæ sacrificium, preces, jejunia, ciborum dilectam, cœlibatum, illa Regina* Elizabetha *abolevit, eadem occupato Regno supremi Ecclesiæ Capitis locum in omni Anglia, ejusq; præcipuam authoritatem atq; jurisdictionem sibi usurpans, Regnum ipsum rursus in miserum exitum revocavit, ad quam velut ad asylum omnium infestissimi perfugium invenerunt, &c. Declaramus prædictam* Elizabetham *eiq; adhærentes, in prædictis Anathematis sententiā incurrisse; Quin etiam ipsam prætenso Regni prædicti jure, necnon omni & quocunq; dominio, dignitate, privilegioq; privatam, præcipimus & interdicimus universis & singulis Proceritus, Subditis, & populis, & aliis prædictis, ne illi ejusve monitis, mandatis, & Legibus audeant obedire; qui secus egerint eos simili Anathematis sententiæ*

Psalm. 109. 28. *Maledicent illi, & tu (Domine) benedices, qui insurgunt in me confundantur, Servus autem tuus lætabitur.* Quæ fuit Oratio serenissimæ Reginæ, cum de publicatione hujus Bullæ audivit.

ted in the Church of England, being evidently grounded upon the sacred and infallible Word of Almighty God, and established by publick authority within this Realm: But after the Bull of Pius Quintus was published against her Majesty in the eleventh year of her Reign (containing amongst other things too long to be repeated for this purpose) in these Words; *Pius* Bishop Servant of Gods Servants, *&c.* She (Queen *Elizabeth*) hath clean put away the Sacrifice of the Mass, Payers, Fastings, choice or difference of Meats, and single Life; She possessing the Kingdom, and by usurping the place of the Supream Head of the Church in all *England*, and the chief Authority and Jurisdiction of the same, hath again brought the said Realm into miserable destruction. Unto her all such as are the worst of the People resort, and are by her received into safe protection, *&c.* We make it known, that the said *Elizabeth*, and as many as stand on her side in the matter above named, have run into the danger of our Curse. We make it also known, that we have deprived her from that right she pretended to have in the Kingdom aforesaid, and also from all and every her Authority, Dignity and Privilege. We charge and forbid all and every the Nobles and Subjects, and People, and others aforesaid, that they be not

Psal. 109. 28. Though they curse, yet bless thou (O Lord) and let them be confounded that rise up against me, but let thy Servant rejoyce. *Which was the Prayer her Majesty made when this Bull was published against her.*

not so hardy as to obey her, or her Admonitions, Commandments or Laws, upon pain of the like accurse upon them. We pronounce that all whosoever by any occasion have taken their Oath uto her, are for ever discharged of such their Oath, and also from all Fealty and Service, which was due to her by reason of her Government, *&c.* As by the said Bull more at large appeareth. After this Bull, all they that depended on the Pope obeyed the Bull, disobeyed their gracious and natural Sovereign, and upon this occasion refused to come to the Church: The publishing of this Bull by a Subject against his Sovereign (as appeareth by that which hath been oftentimes said) was Treason in the highest degree, by the ancient common Laws of England; For if it were Treason to publish a Bull of Excommunication within this Realm against a Subject thereof, as it was adjudged in the Reign of King Edward the first; à fortiori it is Treason in the highest degree to publish such a Bull against the Sovereign and Monarch her self. After this Bull many Bulls of Absolution and Reconciliation to the Church of Rome were published and dispersed amongst her Majesties Subjects, to withdraw them from their natural Loialty and Allegeance to their Sovereign, whereupon no small inconveniences (as

3 Inst. 101.

innodamus, omnes qui illi quomodocunq; juraverunt, a juramento hujusmodi, ac omni prorsus Dominii, fidelitatis & obsequii debito perpetuo absolutos declaramus, ut ex ipsa Bulla plenius videre est. Hac Bulla publicata, omnes qui Pontifici Romano adhæserunt, Bullæ obtemperarunt, obedientiam erga Principem benignissimam, & nativam Dominam, hac arrepta occasione abjecerunt, ad Ecclesiam Anglicanam accedere recusarunt: Publicatio hujus Bullæ ꝑ subditum cõtra suũ Principem, ut manifestum & testatum est ex illis, quæ subinde jam dicta fuerunt, crimen erat Majestatis læsæ & imminutæ, juxta antiquas Communes Angliæ Leges: Etenim si læsæ Majestatis crimen erat, excommunicationis Bullam in hoc Regno contra subditum publicare, ut regnante *Edwardo primo* adjudicatum fuerit; a fortiori Bullam contra Regem & ipsum Monarcham publicare, Majestatis læsæ in summo gradu crimen est. Post hanc Bullam publicatam, plurimæ absolutionis, & ad Romanam Ecclesiam reconciliationis, Bullæ publicatæ & dispersæ erant inter Majestatis suæ subditos, ad eos a fidelitatis & obsequii debito abstrahendos, unde cum magna mala & incommoda (ut

Statutum de 13 Eliz.

constat) promanarint: In Parliamento anno decimo tertio ejusdem Reginæ habito, declaratum erat per universos Regni ordines; Qd' plurimi seditiosi & scelerati machinantes & molientes, seditiose & scelerate non solum hoc Regnum & imperialem ejusdē Coronam (quæ revera ex se sunt liberrima) sub jugum exteræ, usurpatæ & injustæ jurisdictionis, præheminentiæ, & authoritatis à Romana sede sibi arrogatæ redigere; verumetiam subditorum animos à suo Principe, & à debita observantia abalienare, seditionemq; turbulentam & rebellionem intra hoc Regnum concitare, nuper procurarunt & impetrarunt sibi à Romano Pontifice, & ejus Sede, diversas Bullas, eo concilio ut eos absolverent & reconciliarent, quotquot parati essent debitam erga Principem obedientiam projicere, & semetipsos ementitæ, injustæ, & usurpatæ illius authoritatis jugo subjicere. Sed obtentu etiam earundem Bullarum & rescriptorum illi clandestinò & seditiosissime in illis Regni hujus partibus, ubi populus minus instructus, infirmissimus, simplicissimus, & imperitissimus erat, atq; inde suum officium erga Deum & Principem minus intellexit, subdolis nefariis & clan-

The Statute of 13 Eliz.

hereafter appeareth) followed: And therefore at a Parliament holden in the thirteenth year of her Reign, it was declared by the whole Body of the Realm; That divers seditious and very ill disposed People, minding very seditiously and unnaturally not only to bring this Realm, and the imperial Crown thereof (being in very deed of it self most free) again into the thraldom and subjection of the foreign usurped and unlawful Jurisdiction, Preheminences and Authority claimed by the said See of Rome, but also to estrange and alienate the Minds and Hearts of sundry the Queens Subjects from their dutiful Obedience, and to raise and stir Sedition and Rebellion within this Realm, did then lately procure and obtain to themselves from the said Bishop of Rome, and his said See, divers Bulls and Writings, the effect whereof had been, and then was, to absolve and reconcile all those that would be contented to forsake their due Obedience to the Queen, and to yield and subject themselves to the said feigned unlawful and usurped authority: And by colour of the said Bulls and Writings, the said persons very secretly and most seditiously in such parts of this Realm, where the People for want of good instruction were most weak, simple and ignorant, and thereby furthest from

from the good understanding of
their duties towards God and
the Queen, did by their lewd
and subtil practices and per-
swasions so far forth work,
that sundry simple and igno-
rant persons, had been con-
tented to be reconciled to the
said usurped authority of the
See of Rome, and to take Ab-
solution at the hands of the said
naughty and subtil practisers;
Whereby did grow great Diso-
Note the Fruits of the Bull. bedience and Boldness in many
not only to withdraw and ab-
1. sent themselves from all Divine
Service, then most godly set
forth and used within this Realm
but also have thought them-
2, selves discharged of and from
all Obedience, Duty and Al-
legeance to her Majesty, where-
3. by most wicked and unnatu-
ral Rebellion did ensue, and
4. to the further danger of this
Realm, was thereafter very
like to be renewed, if the un-
godly and wicked Attempts
in that behalf were not by se-
verity of Laws in time re-
strained and bridled: For re-
medy and redress whereof, and
to prevent the great mischiefs
and inconveniences that there-
The Parts of the Act. by might ensue; It was en-
acted by the Queen, with the as-
sent of the Lords Spiritual
and Temporal, and the Com-
mons in that Parliament as-
sembled, and by the authority
1. of the same; That if any per-
son or persons after the first day

destinis machinationibus & persuasionibus eo usq; processerunt, ut nonnulli simplices & imperiti, prædictæ usurpatæ authoritati sedis Romanæ sese reconciliari, & à nefariis illis & subdolis machinatoribus absolvi voluerint; Unde magna inobedientia & audacia in multis adeo prorupit, ut non solum à Divino cultu religiose instituto, & hoc in Regno usitato abessent; verumetiam se omni obedientia, obsequio, & fide erga Principem solutos existimarint, & hinc seditio nefaria & rebellio concitata fuit, & ad majus hujus Regni discrimen postea (ut probabile est) concitanda esset, nisi nefarii illi conatus Legum severitate opportune cohibiti fuissent: Quibus incommodis & malis inde emergentibus ut provideretur, & remedium adhiberetur, per Reginam cum assensu Dominorum Spiritualium & Temporalium, necnon Communitatis in Parliamento, & ejusdem authoritate sancitum est; Quod si quis à primo die Julii proxime subsequente, in quocunq; hujus Regni loco, & Reginæ Dominiis, uteretur aut exequeretur aliquam ejusmodi Bullam, rescriptum, vel instrumentum absolutionis vel reconciliationis, scripto vel typis

typis impressa, antea impe-
trata, & postea impetranda
a Pontifice Romano, ejus
successoribus, vel a quibus-
cunq; aliis qui authoritatem
a Pontifice Romano, ejus
Prædecessoribus, vel succes-
soribus, vel Sede Romana,
habent, vel sibi assumunt;
2. Vel si quis a primo illo die
Julii sub prætextu alicujus
ejusmodi Bullæ, rescripti, in-
strumenti, aut authoritatis
aliquẽ absolvere, aut recon-
ciliare susceperit; vel conce-
dere aut promittere alicui in
hoc Regno, aut aliis Reginæ
Dominiis, ullam ejusmodi
absolutionem vel reconcili-
ationem, loquendo, prædi-
cando, docendo, scriben-
do, vel quovis facto aperto;
3. Vel si quis in hoc Regno, vel
aliis Reginæ Dominiis a pri-
mo illo die Julii aliquam
ejusmodi absolutionem vel
reconciliationem sponte ac-
ceperit; Vel si quis impetra-
4. verit a postremo die Parlia-
menti anno primo ejus Reg-
ni habiti; vel a primo illo die
Julii impetrabit a Pontifice
Romano, vel ejus successo-
ribus, aut sede Romana, ali-
quam Bullam, scriptum, in-
strumentum scriptum, vel
typis impressum, de re vel
causa quacunq; vel aliquam
ejusmodi Bullam, rescrip-
tum, vel instrumentum, ullo
modo publicaverit, quod
omnia & singula ejusmodi

of July then next coming, should
use or put in use in any Place
within this Realm, or in any
the Queens Dominions, any
such Bull, Writing or Instru-
ment, written or printed of Ab-
solution or reconciliation, at any
time theretofore obtained and
gotten, or at any time there-
after to be obtained or gotten,
from the said Bishop of Rome,
or any his Successors, or from
any other Person or Persons, au-
thorised or claiming authority,
by or from the said Bishop of
Rome, his Predecessors or Suc-
cessors, or See of Rome; Or 2.
if any Person or Persons, after
the said first day of July, should
take upon him or them by co-
lour of any such Bull, Writing,
Instrument or Authority, to ab-
solve or reconcile any Person or
Persons, or to grant or promise
to any Person or Persons with-
in this Realm, or any other the
Queens Dominions, any such
Absolution or Reconciliation by
any Speech, Preaching, Teaching
Writing, or any other open Deed.
Or if any other Person or Per- 3.
sons within this Realm, or any
the Queens Dominions, after
the said first day of July, should
willingly receive and take any
such Absolution or Reconciliati-
on. Or else if any Person or Per- 4.
sons, had obtained or gotten
sithence the last day of the Par-
liament holden in the first year
of her Reign, or after the said
first day of July, should obtain

or get from the said Bishop of Rome, or any his Successors, or See of Rome, any manner of Bull, Writing or Instrument, written or printed, containing any thing, matter or cause whatsoever.
5. Or should publish, or by any ways or means put in ure any such Bull, Writing or Instrument; That then all and every such Act or Acts, Offence and Offences, should be deemed and adjudged by the authority of the said act to be high treason, and the Offendor and Offendors therein, their Procurors, Abettors and Councellors to the Fact, and committing of the said Offence or Offences, should be deemed and adjudged High Traytors to the Queen, and the Realm; and being thereof lawfully indicted and attainted, according to the course of the Laws of this Realm, should suffer pains of death; and also lose and forfeit all their Lands, Tenements, Hereditaments, Goods and Chattels, as in cases of High Treason, by the Laws of this Realm ought to be lost and forfeited, as by the said Act appeareth.

facta & delicta, authoritate ejusdem statuti crimen læsæ Majestatis habeantur & adjudicentur. Quodque qui in his deliquerint, & eorum procuratores, fautores, & consultores in his factis, & delictis, læsæ Majestatis rei contra Reginam & Regnum habeantur, & adjudicentur; atq; inde legitime accusati & condemnati, juxta Legum hujus Regni præscriptum, extremo supplicio afficiantur; terræ, tenementa, hæreditamenta, bona, & facultates in fiscum redigantur, ut in causis læsæ Majestatis per Leges hujus Regni fieri solet, ut ex eodem statuto liquido apparet.

And albeit many of her Subjects after the said Bull of Pius Quintus, adhering to the Pope did renounce their former Obedience to the Queen, in respect of that Bull, yet all this time no Law was either made or attempted against them for their Recusancy, though it were grounded upon so disloyal a Cause.

Quamvis autē ex hac *Pii Quinti* Bulla, quamplurimi subditi Pontifici Romano adhærentes, pristinam obedientiam erga Reginam reliquerint, nulla tamen lex lata aut rogata fuit contra eos de recusatione, quamvis illa tam injustæ causæ inniteretur. Cum autem Statuto Parlia-

Parliamentario declaratum esset, hoc brutum Bullarum fulmen tot & tanta pericula Reipublicæ intulisse, in earum loco Jesuitæ, & Sacrifici Romanenses huc sunt missi, qui latitantes, in animos quamplurimorum imperitorum subditorum hujus Regni immurmurarunt, & instillarunt, quod Pontifex Romanus authoritatem Reges & Principes excommunicandi & abdicandi habeat, quod ille Reginam excommunicasset, Regno abdicasset, subditosq; omnes fidelitatis & obsequii vinculo absolvisset; & ꝑinde nec ipsi nec ejus mandatis aut legibus sub pœna Anathematis obtemperandum. Hoc per antiquas Angliæ Leges crimen erat Majestatis læsæ in sūmo gradu; Et inde Campianus, Sherwinus, & plures alii Sacerdotes Romanenses apprehensi & confessi, quod in Angliam venerint ad causam Catholicam Romanam firmandam cum opus esset, anno prædictæ Reginæ 21 ꝑ antiquas Communes Angliæ Leges fuerunt in quæstionem vocati, accusati, auditi, condemnati, & extremo supplicio affecti, ob crimen læsæ Majestatis, contra fidem quam suo Principi debeant. Nec adhuc aliquod Statutum Parliamentarium contra Recusantes, Jesuitas, aut

Now that these speechless Bulls were declared by Act of Parliament to be so dangerous; Then in place of them Jesuits and Romish Priests were sent over, who in secret Corners whispered and infused into the Hearts of many of the unlearned Subjects of this Realm, that the Pope had power to Excommunicate and Depose Kings and Princes, that he had excommunicated the late Queen, deprived her of her Kingdom, and discharged all her Subjects of their Oath, Duties and Allegeance to her; And therefore they ought not to obey her, or any of her Commandments or Laws, under pain of the Popes Curse. This was High Treason by the ancient Laws of England; And thereupon Campion, Sherwin, and many other Romish Priests being apprehended, and confessing that they came into England to make a Party for the Catholick Cause when need should require, were in the 21 year of the said late Queens Reign, by the ancient Common Laws of England, indicted, arraigned, tried, adjudged and executed, for High Treason against their natural Allegeance, which they ought their Liege Sovereign. But all this time there was no Act of Parliament made either against Recusants, or Jesuits or Priests, her Majesty still desiring and expecting their

conversion, and that by Clemency and Mildness they might be reclaimed, to their former Obedience and Conformity before the said Bull. After Priests and Jesuits were punished by sentence of Law, according to their Demerits; Then great numbers of slanderous and seditious Books (libri falsidici) against her Majesty and the State, were dispersed and scattered within this Realm, tending to the inciting and stirring of the Subjects to Insurrection and Rebellion.

Her Majesty in open Parliament, having with the Lords Spiritual, Temporal and Commons, mature consideration of so weighty and important Causes, in the 23 year of her Reign made two several Laws; One against the Makers and Publishers of Seditious Books, ordaining that Offence to be Felony; An other against Recusants, inflicting the Penalty of twenty pound the month for their Recusancy; And yet upon their submission according to the Act, to be thereof freely and absolutely discharged, (a mild and merciful Law, considering their former Conformity, and the cause of their revolt.) But after these Jesuits and Romish Priests coming daily into and swarming within the Realm, instilling still this Poison into the Subjects Hearts, that by rea-

The Statute of *anno* 23 *Reginæ Eliz.*

Sacerdotes ſancitum erat, cum ſereniſſima Regina nihil magis in votis habuit, quam ut converterentur, & ad priſtinam obedientiam, quam ante illam Bullam emiſſam præſtiterant, clementia & lenitate revocarentur. Poſtea autem in Sacerdotes illos & Jeſuitas merito legis ſententia animadverſum erat; Inde famoſi & ſeditioſi Libelli, (*Libri falſidici*) contra Regiam Majeſtatem & Statum editi in hoc Regno, & diſperſi erant, ad tumultum conflandum, & ſeditionem concitandum.

Regina in pleno Parliamento, matura deliberatione habita cum Dominis Spiritualibus & Temporalibus, de rebus tantis tantiq; momenti, anno 23 Regni duo ſanxit ſtatuta; Alterum contra authores & divulgatores ſeditioſorum librorum, feloniæ pœnam illis infligens; Alterum contra Recuſantes viginti librarum mulctam in ſingulos menſes pro recuſatione imponens; Nihilominus ſi ſe ſubmiſſerint juxta Statutum illud, inde eſſe abſolutos & liberatos, (mitis ſane & benigna Lex, ſi ad priſtinam conformitatem & defectionis eorum cauſam reſpiciamus;) Poſtea autem Jeſuitæ & Sacerdotes Romanenſes indies in hoc Regnum influentes, & in animos homi-

Statutum de anno 23 *Eliz.*

hominum hoc venenum infundentes, quod p illam *Pii Quinti* Bullam Regina fuerat excõmunicata, Regno abdicata, subditiq; sui omni erga ipsam fide & obsequio exempti, omne saxum moverant, ut ipsos a fide qua Regiæ Majestati erant obstricti abstraherent, & Ecclesiæ Romanæ reconciliarent. Hinc anno Regni sui 27 Parliamentaria authoritate statuit, crimen esse læsæ Majestatis, si quis Jesuita vel Sacerdos Romanensis nativus hujus Regni subditus sacris Romanis initiatus, aut in Jesuitarum societatem admissus jam inde a Regni sui initio, dominia sua adiret, eo concilio ut ipsos inde arceret, ne subditos perfidis illis & perniciosis persuasionibus & machinationibus, ut jam dictum est, contaminarent, quæ proculdubio læsæ Majestatis in summo gradu erant crimina per antiquas Cõmunes Angliæ leges: Nec quis sane Regum Angliæ animo erecto, ex quo hæc Monarchia primum firmata fuerit, eorum vitæ (potissimum si nativi subditi erant) pepercisset, qui subditis persuasisset illum de jure non fuisse Regem, molitusq; fuisset intra hoc Regnum eos a fide & obsequio erga Regem suum abducere, quod p antiquas

Statutum de anno 27 Eliz.

son of the said Bull of Pius Quintus, her Majesty was excommunicated, deprived of her Kingdom, and that her Subjects were discharged of all Obedience to her, and by all means indeavoured to withdraw them from their Duty and Allegeance to her Majesty, and to reconcile them to the Church of Rome. In the 27 Year of her Reign, by Authority of Parliament, her Majesty made it Treason for any Jesuit or Romish Priest being her natural born Subject, and made a Romish Priest or Jesuit sithence the beginning of her Reign, to come into any of her Dominions; intending thereby to keep them out of the same, to the end that they should not infect any of her Subjects with such treasonable and damnable Perswasions and Practices, as are aforesaid, which without controversie were High Treason by the ancient Common Laws of England: Neither would ever magnanimous King of England, sithence the first establishment of this Monarchy, have suffered any (especially being his own natural born Subjects) to live, that perswaded his Subjects that he was no lawful King, and practised with them (within the Heart of this Realm) to withdraw them from their Allegeance and Loialty to their Sovereign, the

The Statute de anno 27 Eliz. Reginæ. 3 Inst. 101.

same being crimen læsæ Majestatis, by the ancient Laws of this Realm.

By this and by all the Records of the Indictments it appeareth; That these Jesuits and Priests are not condemned and executed for their Priesthood and Profession, but for their treasonable and damnable Perswasions and Practices against the Crowns and Dignities of Monarchs, and absolute Princes, who hold their Kingdoms and Dominions by lawful Succession, and by inherent Birth-right and Discent of Inheritance, (according to the Fundamental Laws of this Realm) immediatly of Almighty God, and are not Tenants of their Kingdoms (as they would have it) at the will and pleasure of any Foreign Potentate whatsoever.

Now albeit the Proceedings and Process in the Ecclesiastical Courts, be in the Name of the Bishops, &c. It followeth not therefore, that either the Court is not the Kings, or the Law whereby they proceed is not the (a) Kings Law: For taking one Example for many, every Leet or View of Frank-Pledge holden by a Subject, is kept in the (b) Lords Name, and yet it is the Kings Court, and all the Proceedings therein are directed by the Kings Laws; and many Subjects in England have

(a) Cawley 142.

(b) Cawley 142.

hujus Regni leges crimen erat læsæ Majestatis.

Hinc ex Actis publicis, in quæ eorum accusationes relatæ sunt, luce clarius est, quod Jesuitæ & Sacerdotes illi, non sun condemnati & supplicio affecti, eo quod sint Sacerdotes, & contrariam religionem professi, sed quod proditoriis & execrandis persuasionibus & machinationibus moliti sint contra Coronam & Majestatem Monarcharũ, & Principum absolutissimorum, qui sua Regna & Dominia immediate a summo Deo legitima successione,& jure avito atq; hæreditario, juxta leges fundamentales tenent, & non (ut ipsi somniant) ex alterius cujuscunq; Principis exteri nutu & arbitrio.

Quamvis autem procedendi formulæ & processus in Curiis Ecclesiasticis sint sub Episcoporum,&c. nominibus; Non igitur sequitur Curias illas non esse Regis, vel legem juxta quam procedunt, non esse Regis legem. Sit hoc exemplum instar multorũ; Quilibet Visus Franc̄ Pelḡ a subdito in nomine Domini sui tenetur, & tamen Regis est Curia, & omnes in ea processus ad Regis leges diriguntur, subditiq; quamplurimi Curias

ex

ex Recordo, & alias in Anglia tenent, juxta tamen Regis leges, & Regni consuetudines in iis procedunt.

Observes hic (Candide Lector,) quandoquidem decisio & determinatio hæresium, schismatum, & errorum in Religione, Ordinationum, examinationum, admissionum, institutionum, & deprivationum hominum Ecclesiasticorũ (quæ ad Dei cultum, & veram Religionem spectant) matrimoniorum, divortiorum, bastardiæ generalis (unde stirpium & hæreditatum validitas dependet) probationis testamentorum, literarum administrationum (sine quibus nullum debitum defunctis per legem Cõmunem recuperari possit) mortuariorũ, pensionum, procurationum, reparationum Ecclesiarum, Simoniæ, incestus, adulterii, fornicationis, incontinentiæ, & quorundam aliorum ad Cõmunem legem non spectant: Quam necessarium fuerit ad justitiam exercendam & administrandam, Quod Regiæ Majestatis progenitores hujus Regni Monarchæ, Ecclesiasticas sub ipsis Curias authoritate armaverint, determinandi causas illas Ecclesiasticas tanti momenti (a Communis Legis jurisdictione exemptas) per

and hold Courts of Record, and other Courts, and yet all their Proceedings be according to the Kings Laws and Customs of the Realm.

Observe (good Reader) seeing that the determination of Heresies, Schisms and Errors in Religion, ordering, examination, admission, institution and deprivation of Men of the Church (which do concern Gods true Religion and Service) of right of Matrimony, Divorces and general Bastardy, (whereupon depend the strength of Mens Discents and Inheritances) of Probat of Testaments, and Letters of Administration, without which no Debt or Duty due to any dead Man can be recovered by the Common Law) Mortuaries, Pentions, Procurations, Reparations of Churches, Symony, Incest, Adultery, Fornicati on and Incontinency, and some others, doth not belong to the Common Law, how necessary it was for Administration of Justice, that his Majesties Progenitors, Kings of this Realm, did by publick authority authorise Ecclesiastical Courts under them, to determine those great and important Causes Ecclesiastical (exempted from the Jurisdiction of the Common Law) by the Kings Laws Ecclesiastical, which was done originally for two Causes, 1. That Justice should be administred under the Kings of this Realm, within

within their own Kingdom, to all their Subjects, and in all Causes. 2. That the Kings of England should be furnished, upon all occasions either foreign or domestical, with learned Professors as well of the Ecclesiastical, as Temporal Laws.

Thus hath it appeared as well by the ancient Common Laws of this Realm, by the Resolutions and Judgments of the Judges, and Sages of the Laws of England, in all succession of Ages, as by authority of many Acts of Parliament, ancient and of later times; That the Kingdom of England is an absolute Monarchy, and that the King is the only supreme Governor, as well over Ecclesiastical Persons, and in Ecclesiastical Causes, as Temporal within this Realm; To the due observation of which Laws, both the King and the Subject are sworn. I have herein cited the very words and Texts of the Laws, Resolutions, Judgments and Acts of Parliament, all publick and in print, without any Inference, Argument or Amplification; And have particularly quoted the Books, Years, Leaves, Chapters and such like certain References, as every Man may at his pleasure see and read the authorities herein cited. This Case is reported in the English and Latine Tongues, (as some other

Leges Regis Ecclesiasticas, quod initio duabus de causis factum. Primo, ut Justitia sub Regni hujus Regibus, omnibus suis subditis, & in omnibus causis administretur. Secundo, ut Angliæ Reges peritos Professores Legum tam Ecclesiasticarum, quam Tẽporaliũ in ꝑmptu semper haberent, quæcunq; occasio tulerit, sive illa externa, sive domestica.

Jam pateat, & in promptu sit, tam ex antiquis Cõmunibus hujus Regni legibus, Judicum & Jurisprudentissimorum in Anglia sententiis & judiciis, singulis seculis, quam ex authoritate plurimorum Statutorum Parliamentariorum priscis temporibus, & recenti memoria; Quod Regnum Angliæ sit Monarchia absoluta; Quodque Rex solus & summus sit gubernator tam personarum Ecclesiasticarum, & in causis Ecclesiasticis, quam Temporalium, & in Temporalibus intra hoc Regnum. Ad quas leges sancte & inviolate observandas, & Rex & subditi jurejurando obstricti tenentur. Legum autem, Sententiarum, Judiciorum, Statutorum Parliamentorum, quæ singula publice typis impressa prostant, ipsissima verba & textus sine ulla illatione, argumentatione, aut amplificatione allegavi; Libros vero,

annos

annos, paginas, & id genus alia sigillatim adnotavi, ut quilibet pro arbitrio oculis intueatur & legat, Anglice & Latine editi (quod & nonnulli nostri juris scriptores fecerunt) eo concilio, ut concives charissimi in Regni hujus legibus, ipsorum jure avito & hæreditario, necnon illustribus ejusdem juris indiciis hac in parte non sint peregrini; Ad veritatem persuasus, quod nemo ex Anglorum gente modo sanus, & ingenue sincerus, qui persuasus antequam informatus fuerat, in veritate (quam ipse oculis intueatur suis) abnuet, ne ab errore dissuaderetur, quo obcæcatus sit abductus; Misere enim cum illo agitur, & misericordia dignus, qui fuit persuasus priusquam informatus, & nunc informari abnuit, qui persuaderi nolit.

Writers of the Law have done,) to the end that my dear Countrymen may be acquainted with the Laws of this Realm, their own Birthright and Inheritance, and with such Evidences as of right belong to the same; Assuring my self that no wise or true hearted English Man, that hath been perswaded before he was instructed, will refuse to be instructed in the Truth (which he may see with his own Eyes) lest he should be disswaded from Error, wherewith blindfold he hath been deceived; For miserable is his case, and worthy of pity, that hath been perswaded before he was instructed, and now will refuse to be instructed, because he will not be perswaded.

Cases

Cases de Leases.

Mich. xxvii & xxviii Eliz.

In Bank le Roy.

Clayton's Case.

IN Ejectione firmæ enter Clayton & Presenham, de tres en Lichborow, en le County de North. le case fuit tiel: Indentures de demise fuer engrosse portant date 26 Maii, anno 25 Eliz. de tre in L. a aver & tener (for three years from henceforth) & les dits Indentures fuer deliv al 4 del horologe in le meridy del 20 jour de June, anno 25 supradicto: Et qnt cest lease p computation avera s comencemt; ou del jour del date, ou del delivery, fuit le qstion. Et in cest case 3 points fuer resolve p Wray Chief Just. Sir Thomas Gawdy, & tout le Court. ¶ Primermt, Que from (a) henceforth serr accout del jour del delivy des Indetures, & nemy p ascun computatio del date: car from henceforth est tant adire, coe from the making, ou del teps del delivery des Indentures, ou (b) a cofectione psentiu, car le confectio ou making del lease comence p le delivery, & ceux pols (from henceforth) ou ascu auts pols del Indenture ne sont deffect, ou dascu force, tanq deliv; quia traditio loqui facit cartā. ¶ 2. Que ou le dit Indeture fuit deliver al 4. de le horologe puis meridie del dit 20 jour de June, Fuit resolve, q cest lease finier le 19 jour de June, en le 3 an: Car

Latch 61.

(a) Co. Lit. 46. b. Cr.Jac.258. Wing. Max. 13.

(b) Co. Lit. 46. b. 2 Rol.520. Apres 94.a. Cr. Jac. 647. Plowden 108. b. Wing. Max.13.

Car le ley en cest cõputatiõ reject touts (a) fractions ou divisions del jour p̃ le incertainty, q̃ touts foits est le mere del contentiõ. ¶ 3. Que in cest case le jour del delivery del lease sert prise inclusive, & le jour mesme est pcel del demise: issint ou le demise est limit a cõmencer a confectione; mes si le lease soit a cõmencer a die confectionis, (b) ou a die datus, la le jour m̃ del date est exclude, & issint le doubt in 12 Eliz. Dyer (c) 286. bien explain, & ove cest resolution accord 14 Eliz. Dyer 307. Et fuit adjudge in le Cõmon Bank Trin. 21 Eliz. Reginæ, q̃ ou les pols del statute de 27 H.8. cap. 16. de Inrolm̃ts sont, (within six months after the date of the same Writings indented) q̃ si tiels writings ont date, q̃ les 6 moys sert account del date, & nemy del delivery; mes si fault date, donq̃s le 6 moys sert account del delivery. Vide Dyer 5 Eliz. 218. un Indenture de bargain & sale port date le 4 jour del October, 4 & 5 Philip. & Mariæ, fuit (c) inrol 21 Martii proxim̃ sequen', q̃ fuit le darrein jour de 6 moys, accountant le jour del date exclusive. Et fuit adjudge sur demurrer in le Cõmon Bank (q̃l plea cõmence Paschæ 4 Eliz. Rot. 812.) q̃ le fait fuit bien inrol deins le dit act: Car le entier jour del 4 Octobris sert account in ley, le date del Indenture; unde sequitur, that from the date, (d) and from the day of the date, sont tout dun m̃ sense; intant q̃ in Judgm̃t del ley le date include tout le jour del date.

(a) 1 Brownl. 125. Moor 879. Cawly 198. 2 Rol. 521. 3 Inst. 53.

(b) Hob. 140. Cr. Jac. 135, 136, 258, 647. Co. Lit. 46. b. Apres 94. a. 2 Rol. 520. 1 Rol. Rep. 387, 388. Owen 50 1 Bulstrod 177. 2 Bulst. 83. 3 Bulst. 203. 2 Cr. 264.

(c) Hob. 139, 140. Moor 40, 41, 42, 879. Dall. in Kelw. 205. pl. 6. Dall. in Ash. pl. 6. 2 Inst. 674. Yelv. 100. Latch 14, 60. Dall. 41, 42. 1 Rol. Rep. 387. 3 Bulstr. 203. Dyer 218. pl. 6. 286. pl. 43. Co. Lit. 46. b.

(d) Cr. Jac. 136. 1 Rol. Rep. 387. 3 Bulst. 204.

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Trin. xxx Eliz. Reg.

In Bank le Roy.

Elmer's Case.

INter Elmer (a) Evesq; de Londres & Gale Def. p le scite del Manor de Drayton in Midd. deux points fuer resolve. ¶ 1. Que le statute de (b) 1 Eliz. est private Act, dont le Court sans pleader de ceo ne prendroit conusans. ¶ 2. Fuit resolve, q ou le dit scite, pcel del Evesquery fuit en lease pur ans, & Grendal Levesq; ouste le Lessee, & fist lease (que fuit confirm per le Dean & Chapter) pur trois vies, rendant lancient & accustomed rent; q cest lease fuit voidable per le (c) successor. ¶ 1. Pur ceo q le statute de 1 Eliz. fuit en le disjunctive, pur 21 ans, ou pur 3 vies, & pur ceo levesq; ne poit fair ambideux: Mes si in le case al barr, le dit lease serr bon; donqs un Evesq; poit fair un lease pur 21 ans, & maintenant apres, fair lease p 3 vies, q serr encounter le letter & meaning del dit Act. ¶ 2. Le rent reserve sur le lease nest pas paiable deins le meaning del dit act: Car comt ex vi termini, ceo est paiable, pur ceo que apres le lease pur ans determin, le lessor distrainer pur touts les arrerages del rent reserve sur le leas pur vies; uncore ceo nest payable deins le meaning del act: Car lact fuit fait a maintainer hospitality, & davoyder dilapidations, & ceo ne poit estre, mes pur un continual revenue annuelment payable pur inhertion del ley, & nemy in expectancy, ou in futuro: Car (d) possibilities ne maintain hospitality: Car les lessees pur vies averont le rent reserve sur le lease pur ans, & sils survivont

(a) 10 Co. 60. b, Moor 253. Hard. 89. 2 Brownl. 164. Winch. 47.

(b) Rast. Leases 4. Cr. Jac. 112. 4 Co. 76. a. Doct. placit. 337. Moor 108, 253. 1 Andersf. 65, 66, 193. 3 Leon. 59. Cr. El. 141. 2 Brownl. 164. Co. Lit. 45. a. Palm. 467, 468. Latch. 241. Cr. Car. 50. 10 Co. 60. a. b.

(c) 3 Co. 60. a. Co. Lit. 45. a. Cr. El. 473, 474, 564. 10 Co. 59. a. 3 Keb. 109. Mod. Rep. 205. Cart. 13, 16. 1 Vent. 247. 1 Rol. Rep. 152, 154, 156, 169.

(d) Bridg. 122.

(a) 10 Co. 60. a. 3 Co. 50. b. 5 Co. 6. a. 6 Co. 37. a. 7 Co. 7. b. 8 Co. 34. a. 72. a. 9 Co. 140. b. Co. Lit. 44. a. 333. a. Plowd. 112. b. Rast. Leases 2. Dyer 72. pl. 3. 162. pl. 48. 191. pl. 22. 246. pl. 69. 271. pl. 28. 357. pl. 43. 363. pl. 26. Savil 85. pl. 165. Cr. Jac. 173. Cr. Car. 22. 44, 435. 1 Rol. Rep. 159, 163, 230. 2 Rol. Rep. 169, 311, 332, 405, 410, 491, 499. Hob. 204. Latch. 45. Bridg. 28. Moor 58, 759, 783. 1 Leon. 59, 148. 3 Leon. 132, 156. 1 Jones 60. 2 Inst. 342, 681. Godb. 102. pl. 119. 3 Keb. 381. Cr. El. 350, 602. (b) Moor 783. Hut. 8. Lit. Rep. 131. Hob. 204. Co. Lit. 44. b.

survivont lease pur ans, donques Leveseq & ses Successors averont remedy pur le rent, & les arrerages reserve sur le lease pur vies, come ad estre dit. Et fuit dit, que ou lestatute de (a) 32 H. 8. cap. 28. provide, that the old Lease be surrendred within one year, &c. que surrender (b) conditional nest pas deins le dit Act: Car lentention del feasors del Act fuit, daver continual & absolute surrender, & nemy tiel illusory surrender, que poet estre avoid le prochein jour: Car, factum non dicitur quod non perseverat, & sensus verborum est anima legis. Mes in le principal case, Judgment fuit done encounter Leveseq, pur le non pleader del dit Statute de 1 Eliz.

Trin.

Trin. xxx Eliz. Reg.

In Bank le Roy.

Jewel's Case.

INter Paul & Maior le case fuit (a) Jewel Evesque de Saf, anno sexto Reginæ Eliz. per fait indent fist lease dun Faire, parcel des possessions de son Evesquery, ove touts profits de ceo in Sherburn, in le County de Dorset, pur 3 vies: rend' le old & accustomed Rent, quel fuit confirm per le Dean & Chapter. Et puis Levesque morust; & si cest lease fuit bon vers le successor, & nemy restrain & fait void per lestatute de (b) primo Eliz. nient imprime, fuit le question. Et fuit adjudge, que le Successor avoidera le lease: Car un Fair nest forsque un franchise, ou liberty, nient mainorable, hors de quel un rent (c) ne poit estre reserve: Et pur ceo pur tiel rent reserve, le lessor ou ses Successors nont ascun remedy, ou per distresse, ou per assise; & touts leases de tiels inheritances, hors de que lancient & accustomed rent ne poet estre bien & loyalment reserve, sont voidable per le dit Act: Fuit auxy resolve, que si le lease ust estre fait pur 21 (d) ans, rend' lancient & accustomed Rent, le Successor avoidera ceo: Car coment que le rent reserve sera bon per voy de (e) contract inter le lessor & lessee; uncore ceo nest incident al reversion, ne alera ove ceo: Et pur ceo tiel lease sera auxy voidable per le Successor, per le dit statute. Vide 17 E. 3. 75. b. 9 Ass. p. 24. (f) 30 Ass. p. 5. 14 E. 3. Scire (g) facias 122. 10 H. 6. 2. 3 H. 6. 21. &c.

(a) 10 Co. 60. b.

(b) Ley's Rep. 77. 5 Co. 2. a. Rast. Leases 4. Cr. Jac. 112. 4 Co. 76. a. Doct. placit. 337. Moor 108, 253. 1 Anders. 65, 66, 193. 3 Leon. 59. Cr. El. 141. Co. Lit. 45. a. 2 Brownl. 164. Palm. 105, 467, 468. Latch. 241. Cr. Car. 50. 10 Co. 60. a. b.

(c) 7 Co. 23. b. Co. Lit. 44. b. 142. a. Apres 4. a. Cr. Jac. 111, 112. 5 Co. 4. a. Moor 163, 168. 2 Rol. 446. Cr. El. 690. 2 Sand. 303. Vaugh. 203. Raymond 194.

(d) Cr. Jac. 112. 2 Sand. 304. Moor 778.

(e) 2 Sand. 303.

(f) Apres 4. a.

(g) Apres 4. a.

Mich. xxxi & xxxii Eliz.

In Bank le Roy.

Seignior Mountjoy's Case.

Moor 197, 494. Hardr. 89, 92, 397. 3 Keb. 192, 373, 378, 380, 583, 596, 597. Lit. Rep. 305.

Richard Shephard Plaintiff vers Blackaller Defendant, in Ejectione firmæ de 2 meases, & 18 acres de terre in Hemston Arundel, sur demise fait 10 Aprilis 28 Eliz. pur 3 ans; Le Def. plead Non culp. Et Jurors quant al moity dun mease & 18 acres, trove le Def. culp, & quant al residue, ils done un special verdict, a cest effect: Ils trove q le tenements in queur, &c. fuer parcel del Manor del Hemston Arundel, & demise & demisable de temps dont, &c. per Copy, &c. & que Robert Seignior Brook fuit seisie del dit Manor in fee; & trove ouster, que per un especial Act de Parliament, fait 4 Februarii anno 27 H. 8. le dit Manor fuit entail al Anne feme de Charles Seignior Mountjoy, & al John Pawlet & Elizabeth sa feme, & a lour heirs de lour corps ingendres, ove diverse remainders ouster. Per quel Act fuit purview come ensuit, s. q les donees, ne ascun de eux, non facerent aliquid in nocumentum, vel exhæreditationem hæred' suorum, vel eorum alicujus, vel alicujus eorum in remanere, sed tantum pro junctura uxoris pro termino vitæ, vel alicujus viri, &c. pro termino vitæ, vel pro termino vitæ alicujus aliæ personæ, vel pro annis, vel ad voluntatem, secundum consuetudinem Manerii; Reddend' verum & antiquum reddit' prædictarum terr, & tenitorum sic demissorum; & qd', touts auters Acts serr void, come per le dit Act appiert. Et trove ouster, que le dit Manor consist de diverse free rents, amountant al 7 l. &c. de 15. copyhold tenements, q fuer tenus pur vies, le customary rent de queux fuit iii l.

iii l. & des demeasnes, queux ount usualmt estre demise per Indenture, pur les several rents & fearms de vii l. &c. & que fuit un acre de waste parcel del dit Manor, in q̄ fuer̄ diverse haut-voyes, & common p̄ les tenants, del annuel value de xii d. Et q̄ sur mort de chescun copyholder, le Snr p custom doit aver Herriot; & q̄ la fuit Court Baron incident al dit Manor, & perquisits del Court, & un Leet perteinant al dit Manor; & q̄ le free rents, ou Copyhold rents, ou herriots, ou perquisits del Court, ou Leet, ne unques fuer̄ demise devant, p̄ vie, ou p̄ ans, ou autermt; Et que puis Charles Seignior Mountjoy morust: puis q̄l mort, le dit Anne sa feme, in anno 6 Eliz. accept un fine dun estranger, sur Conusans de droit, come ceo, &c. del moity del dit Manor cum pertiñ, & de grand nombre des acres, queux comprehend les demeasnes. Per q̄l fine, le dit Anne grant & render le moiety del dit Manor, &c. cum pertiñ, p̄ 300 ans, rendant rent amountant a les free rents, les copihold rents, les fearm rents, & xviii d. pluis, & xii d. p̄ le acre de waste, destre a pay 2 feasts del an, lou lancient rent fuit payable al 4 feasts. Et puis, le dit Anne morust, & le ore Pl' claim desouth le dit lease p̄ 300 ans; & le Def. claim p le Snr Mountjoy, q̄ ore est, esteant heir al dit entail. Et le doubt de cest case fuit, si le dit lease p̄ 300 ans, in manner & form avãtdit fait, fuit destre avoid p le dit clause del restraint del dit Act de 27 H. 8. ou nemy. Et fuit argue del part del Pl' (in q̄ tant fuit dit come le ceur de home poet invẽt ou excogitate) q̄ le lease ser̄ bon, & nemy restrain p le dit Act. Et tout ceo q̄ fuit dit, poet estre summaremt divide in 5 parts. ¶ 1. Entant q̄ cest act restrain le power, q̄ le tenant in tail avoit p les leys del terre, ceo serra prise strict, quant al restraint, & beneficialment p̄ le tenant in tail: Et a cest purpose le rule mise per Read in 21 H. 7. 17. b. & 18 E. 4. 16. a. & mults auts livres sur cest ground fuer̄ cite. ¶ 2. Fuit dit, q̄ comt q̄ les rents dassise, herriots, leets, &c. ne unques fuer̄ demise devant, ceo ne fuit material: Car hors de eux le rent reserve ne (a) issuist, mes solement hors del choses maynorable, a q̄ le lessor poet resort a distreyner. Come in 9 de Ass. 24. lease de terre & (b) del moulture del molyn, renđ rent: ou in 30 Ass. 5. lease de fre & (c) hundred ou advowson, renđ rẽt, &c. tout le rẽt issuer̄ hors del terre, & nemy hors del moulture, advowson, ou hũdred. Mes le Roy poet reserve hors de Fair, ou aut chose niẽt mainorable, cõe est adjudge en 14 E. 3. tit. (d) Scire facias 122, pur ceo q̄ il poet (e) distrein pur r̄ in touts

(a) Devant 3. a. 7 Co. 23. b. Palm. 105. Co. Lit. 44. b. 142. a. 2 Rol. 446. Cr. Jac. 111, 112. Moor 163, 168. 2 Saund. 303, 304. Raym. 194. Cr. El. 690. Vaugh. 203.
(b) Br. Rents 11. Br. Tenure 26.
(c) Devant 3. a.
(d) Devant 3. a.
(e) Plowd. 239. a. 243. b. 343. a. Br. Prerogative 68, 77. Fitz. Grant 47. 44 E. 3. 45. a. Fitz. Prerogative 7. Br Distress 6, 49. 13 E. 4. 6. a. 2 Inst. 131. 4 Inst. 119. 5 H. 7. 38. b. 5 Co. 56. a.

touts auters terres del grantée. Vide 10 H.6.2. Et cest point fuit conclude ove 12 Ass. p. 40. q̄ si rent soit grant hors dun Manor, q̄ les demeasnes solemt, (a) ꝛ nemy les services, sont charge. ¶ 3. Comt q̄ acre de waste q̄ ne unques fuit demise devant, ꝛ comt q̄ le moiety fuit ore demise, ou nul moity fuit demise des demeasnes devant, ꝛ comt q̄ le rent fuit reserve a deux jours del an, ou devant ceo fuit reserve a iv jours del an; uncore verus & antiquus redditus est reserve deins le dit act. Car chescun rent ad quantity ꝛ quality, & verus & antiquus redditus nest destre intende de chescun quality incident a ceo, mes del quantity del rent; car ceo est leffect ꝛ substance del chose reserve: Coe si lancient reservation fuit de rēt destr paie in ore, (b) ꝛ le novel reservatiō fuit destr pay in argent: Ou si un quarter de frumt fuit ancientmt reserve, ꝛ (c) ore le lease est fait renď viii bushels de frumt, tout est un: Car le ley ne respect les forms del parols, ou le quality, mes le substāce ꝛ effect del matter. Issint si lanciēt rēt fuit x l. ꝛ le lessor reserve (d) xx l. c̄ nest ex vi termini verus & antiquus redditus, mes (e) parū differūt q̄ re cōcordāt, & (f) qui hæret in litera, hæret in cortice. Et ne besoigne dad touts qualities incidēt al annuel rent; car si fuit customary ou copyhold rēt devāt, auř rēt poit ore estr reserve p Indenture: Car p c̄ il ad̄a le veram & antiquam summam redditus q̄ il avoit devāt, ꝛ c̄ est leffect ꝛ substance del matter, comt q̄ c̄ differt in quality: Issint quant le rent est payable al iv jours del an, (g) ꝛ ore est reserve a deux jours solemt, ceo nest material. Car les pols sont, reddendo verum & antiquum redditum, ꝛ ne dit, ad usualia festa, &c. issint sil reserve le voyer ꝛ lancient rent suffist. Et fuit dit si tenant in tail soit de ii fearms, (h) lun q̄ ad estre touts temps demise p̄ xx l. rent, ꝛ lauter p̄ x l. rent, ꝛ il fait lease dambideux p̄ xxi ans renď xxx l. rent entiremt hors del ambideux, ceo est bon; ꝛ uncore c̄ nest pas laccustomable rent q̄ ad estre paye, ꝛc. Car ore ceo est entire rent, ou fuit several devant: Et ore cest entire rent issuist hors dambideux, ꝛ chescun de eux charge ove lentier rent, ou chescun de eux fuer̄ severalment charge devant: mes entier ꝛ several sont forsq; qualities del rent, mes in substance, laccustomable rent est reserve, car eux ambideux amount a xxx l. ꝛ c̄ est reserve. Issint si tenant in tail soit seisie de iii acres de terre, chescū de owel annuel value, ꝛ touts ad estre demise p̄ iii s. p annum, in tiel case, il poit demise un de eux p̄ xii d. p annum, ou ii de eux p̄ ii s. per annum, ꝛ issint (i) pro rata: ꝛ uncore in ceux ii cases ceo nest laccustomable

(a) Br. Charge 19.
(b) Apres 5. b.
(c) Bridg. 20. Apres 5. b.
(d) Co. Lit. 44. b.
(e) 10 Co. 124. b. 2 Bulstr. 53, 86. 1 Leon. 160.
(f) 11 Co. 34. b. Co. Lit. 54. b. 283. b. Wing. Max. 19. Hawks Max. 425. 3 Bulstr. 65.
(g) 6 Co. 38. a. Apres 5. Co. Lit. 44. b. Ley 72. Cr. Jac. 76, 77. 2 Rol. Rep. 407. Cr. Car. 17. Degge 111.
(h) Apres 5. b.
(i) Apres 5. b. Co. Lit. 44. b.

customable rent q̃ ad estre pay. Issint si ii (a) coparceners sont seisie de certein terre in tail, q̃ ad estre demise pur x l. rent, lun de eux poet demise son purparty, ou moity pur v l. En touts queux cases, le rent reserve, com̃t q̃ ceo differt in form ou quality, uncore in substance est verus & antiquus redditus, deins le dit Act de 27 H. 8. Fuit ouster dit, q̃ si un Manor ad estre touts foits demise pur x l. rent, & puis un tenãcy * escheat; uncore ceo poet estre demise pur x l. & uncore poet estre argue, q̃ ceo nest verus & antiquus redditus; car nul rent fuit unq̃ reserve devant, hors de le terre escheat: & per consequence le rent reserve ne poit estre dit, verus & antiquus redditus. Mes c̃ serr̃ trope nice & subtil interpretation; Car pari ratione, si un Copyhold de inheritance soit forfeit, poet estre dit, q̃ pur ceo q̃ le rent del copihold fuit demise, & nemy le tre, ceo impeachera le lease; q̃ serr̃ trope dure construction tẽdant davoid̃ mults leases des poures homes, q̃ serra inconvenient. Issint in le case al barre, com̃t que lacr̃ de (b) waste ne unq̃s fuit demise devant, uncore entant que le value de ceo, & pluis est reserve, le purvieu & lentention del Act est bien observe. ¶ 4. Fuit argue, & fortm̃t urge, q̃ si le dit render, quant al dit acre de waste, les services, herriots, leets, &c. (q̃ ne unques fuer̃ demise devant le dit grant & render) serr̃ void per le dit act, que donques ensuist, que ceo est bon pur les demeasnes, q̃ ount estre demise: Car donques tout le rent reserve issuer̃ hors de les demeasnes. ¶ 5. Si ne serr̃ void quant a tiels choses, queux ne fuer̃ demise devant, uncore apres le mort de cessy q̃ fist le grant & rend̃, serra apportionm̃t del rent p̃ eux: Et donques intant q̃ lentier rent, & pluis, est reserve p̃ les demeasnes (com̃t q̃ le rents de freeholders & copyholders, & lacr̃ de waste soient deduct) & verus & antiquus redditus, & pluis ouster eux remainer p̃ les demeasnes; a cest cause fuit urge, q̃ le dit render serra bon p̃ les demeasnes, Et id (c) certum est, quod certum reddi potest. Et in cest case, apres plusors argum̃ts, & grand deliberation & consideration, 6 points fuer̃ resolve. 1. Que com̃t, q̃ est purvieu p le dit act, q̃ touts estates, &c. restraine per le dit act, &c. serr̃ void, uncore ceo nest per construction del ley void quant al tenant in tail m̃, (d) mes serr̃ avoid per ses issues in tail: car lentention del act fuit a provider, q̃ les donees, ou ascun de eux, non facerent aliquid ad nocumentum, vel exhæreditationem hæred' eorum, & nemy a faire void lestate q̃ le donee m̃ fist encounter luy m̃: & touts Acts de Parliament, cibien private, come general, serr̃ prise p

reasonable

(a) Co. Lit. 44. b. Apres 5. b.

* Apres 6. a.

(b) Apres 5. b. Moor 199.

(c) Co. Lit. 45. a 96. a. 142.a. 9 Co 30. a. 47. a. 4 Co 66. b. Lane 51. Hetley 98. Apres 6.a. 2 Brownl 336.

(d) 3 Co. 59.b. 60.a. Moor 199. 10 Co. 59.a.b. 60.b. 61.b. Co. Lit. 45. a. Cr. El. 207. 1 Anders. 244. Carter 13, 16. 1 Rol. Rep. 152, 159, 169. Mod. Rep. 295. 1 Vent. 247.

reasonable construction, destre collect hors del parols del Acts m̃, solonque le voyer intention & meaning des feasors del Act: Vide (a) 14 E. 4. 1. a. & (b) 43 Ass. 29. ¶ 2. Fuit resolve, q̃ en respect del dit acre de waste, q̃ ne unques fuit (c) demise devant, le rent q̃ est entierment reserve hors de tout, ne poit estre dit, verus & antiquus redditus: Car coment poit c̃ estre dit, verus & antiquus redditus, quant c̃ issuist hors del chose, q̃ ne unques fuit charge dascun rent per ascun reservation devant? ¶ 3. Per le grant & render del Manor, cesty a q̃ le render est fait, ad interest & term en les terres tenus p copy, & quant ascun des copyholders devy, ou soit forfeit, il poit enter & enjoy le terre luy m̃, sil voit & le rent reserve issuit hors de m̃ les terres tenus p copy, queux terres ne unques fuer̃ charge ove ascun ferme rent devant, mes touts temps avoit estre demise p copy solonque le custom del Manor: & quant les demeasnes del dit Manor avoient estre solemẽt demise pur rent, en le case al barr̃, lentier Manor ne poet estre demise deins le dit act. Aury, les estates q̃ tenant in tail ferra p le dit act de 27 sont distinguish p lact, s. estate p̃ vie, p̃ ans, & a volunt, solonque le custom del Manor: Mes p cest grant & render touts sont mise en hotchpote & tumble ensemble (come Sir Thomas Gawdy dit) ou les coppyholds doient aver estre grant per copy, solonque le custom del Manor, & nemy p fine, ou fait. ¶ 4. Le reservation del rent a (d) ii jours, ou le rent fuit reserve & payable al iv jours devant, fait le grant & render void, pur ceo est ad nocumentum del heirs in tail, q̃ est restrain p lact: Car est pluis beneficial p̃ eux daver ceo pay a iv feasts, q̃ a ii; & touts beneficial qualities del rent covient estre reserve & observe. ¶ 5. Quant al cases, q̃ ount estre mise de reservation de argent, (e) in lieu de ore, ou de joyner (f) ii sever̃al fearms in un demise, ove reservation dun m̃ rent, ou a demiser pcel dun fearm rend̃ rẽt pro rata, touts ceux fuer̃ deny p tout le Court. Mes le case de reservation de viii bushels de frumt, (g) en lieu dun quarter, est tout un en quality, value & nature, & vary solemẽt en parols. Mes Wray Chief Justice dit, q̃ il agree al case de ii (h) coparceners, que lun poit demiser sa moity, rendãt le moity del accustomable rent, car entant q̃ ils sont eins p act de ley, & de Dieu, serr̃ dure q̃ le frowardness de sa coparcener prejudicera luy del benefit del fine, q̃ el poet aver p feasans dun demise de sa moity: Et issint diversity inter cest case, & le case de demise dun pt ove reservatiõ de rẽt (i) p rata, q̃ est son acte demesne, & q̃l rent pur parcel nest pas laccustomable

(a) 4 Co. 76. b. Br. Parliament 61.
(b) 4 Co. 76. b. Br. Parliament 35.
(c) 3 Bulstr. 291. Moor 198, 199, 494. Cr. Car. 50. Co. Lit. 44. b.
(d) Co. Lit. 44. b. 6 Co. 37. b. 38. a. Devant 4. b. Ley. 72. 2 Rol. Rep. 407. Cr. Jac. 76, 77. Cr. Car. 17. Degge 111.
(e) Devant 4 b.
(f) Cr. Car. 21, 22. Devant 4. b.
(g) Bridg. 20. Devant 4. b.
(h) Devant 5. a. Co. Lit. 44. b.
(i) Co Lit. 44. b. Devant 4. b.

mable

mable rent, q̃ ad estre pay. Issint & pur m̃ le cause, quant 2 distinct fearms sont (a) joyn ensemble, lentier rent q̃ est reserve hors del ambideux, est novel rent, & nemy laccustomable rent. Et q̃nt al case de (b) escheat dun tenancy, fuit agreé pur bon ley: Car lact de ley, ou de Dieu, ne ferr̃ prejudice al ascun. Mes si le lessor avoit purchase le tenancy, autermt̃ serroit, car c̃ q̃ est purchase nest parcel del Manor, p̃ c̃ q̃ il acquire c̃ p son act demesne. ¶ 6. Fuit resolve, q̃ nul apportionmt̃ (si ascun serr̃) in cest case serra le render bon; Car primermt̃ nul apportionmt̃ poet estre fait in cest case, intant q̃ la sont Coppholders pur vies des homes, queux depend sur le providence de Dieu, herriots, profits de Court, queux sont accidentals, & auters casualties queux ne poient estre reduce a un (c) annuel value, come est dit in Butler & Bakers Case, a cest cause nul apportionmt̃ poit estre fait; car apportionmt̃ covient estre de certainty. Et ou fuit dit, quod id (d) certum est, quod certum reddi potest: Fuit rñde, quod id* incertum est, quod certum reddi nullo modo potest. 2. Wray Chief Justice dit, q̃ comt̃ serr̃ ou poit estre apportionmt̃ puis le mort del tenant in tail, c̃ ne servet̃ a fair̃ le grãt & render bon: Car, si verus & antiquus redditus ne soit reserve annuelmt̃, durãt le term (come p construction del ley est imply) le power q̃ le tenãt in tail ad, nest pas pursue; car nest sufficiẽt, qd' verus & antiquus redditus soit reserve al heirs in tail, mes covient estr̃ auxy reserve al tenant in tail m̃; & p̃ c̃ sil reserve a luy meinder rent durãt son vie, & puis son mort, le voyer & lancient rent, le lease nest bon: Et comt̃ q̃ le statute fuit fait principalmt̃ (come ad estr̃ dit) p̃ le benefit des heirs in tail, &c. uncore le reservation covient in construction del ley estre del voyer & ancient rent, durãt lentier term: Et p̃ c̃, si le voyer & lancient rent ne soit reserve durãt le vie del tenant in tail, q̃ fist le grant & rend (come in rei veritate ne fuit in le case al barre) nul apportionmt̃ apres son mort voet fair̃ le demise bon. Et intant q̃ le terre m̃ tenus p copy fuit demise, appiert q̃ sur lapportionmt̃, si ascun serr̃, lancient rent ne remainer̃ p̃ le demeasnes. Et en largumt̃ de cest case, les diṽsities de penning des diẽs statutes concernant leases, fuer̃ observe. Lestatute de 32 (e) H. 8. c. 28. c̃ appoint le demise a cõmencer, from the day of the making, &c. not above the number of 21 years, or three Lives, and that there shall be reserved yearly during the same Lease, &c. so much yearly rent or fearm, or more, as hath been most accustomably paid, &c. within 20 years before such Lease made, issint q̃ lease pur

(a) 1 Co. 139. a. Cr. Car. 21, 22.

(b) Devant 5. a.

(c) 3 Co. 32. b. 33. a.

(d) Co. Lit. 45. b. 96. a. 142. a. 9 Co. 30. a. 47. a. 4 Co. 66. b. Devant 5. a. Lane 51. Hetl. 98. 2 Brownl. 336.

* 1 Co. 155. a.

(e) 3 Co. 50. b. 5 Co. 2. b. 6 Co. 37. a. 7 Co. 7. b. 8 Co. 34. a. 72. a. 9 Co. 140. b. 10 Co. 60. a. Co. Lit. 44. a. 333. a. Plow. 112. b. Rastal Leases 2. Dyer 72. pl. 3. 162. pl. 48. 191. pl. 22. 246. pl. 69. 271. pl. 28. 357. pl. 43. 363. pl. 26. Sav. 85. pl. 165. Cr. Jac. 173. Cr. El. 350, 602. Cr. Car. 22, 44, 435. 1 Rol. Rep. 159, 163, 230. 2 Rol. Rep. 169, 311, 332, 405, 410, 491, 499. Hob. 204. Latch. 45. Bridg. 28. Moor 58, 759, 783. 1 Leon. 59, 148. 3 Leon. 132, 156. 1 Jones 60. 2 Inst. 342, 681. Godb. 102. pl. 119. 3 Keb. 381.

pur meinder terme, ou greinder rent, est deins le letter del dit statute. Les parols del statute de 1 Eliz. de Leases faits p Evesques sont, other than for the term of one and twenty years, or three lives, (sans dire or under) from such time as any such Grant or Assurance shall begin, whereupon the old accustomed yearly rent, or more (sans limitation dascun temps) shall be reserved, &c. & uncore lease pur meinder term est bon, & le rent covient estre reserve durant tout le term. Lestatute de 13 (a) Eliz. c. 10. other than for the term of one and twenty years or three Lives (sans dire or under) from the time as any such Lease or Grant shall be made, whereupon the accustomed yearly Rent, or more shall be reserved, &c. Et mults auters matters fuer move per le Councel de ambideux parties al barre in cest case, queux jeo ay de purpose omitte pur ceo que de eux le Court ne done ascun resolution. Et gards bien (bon Lecteur) si vous contract pur ascun demise sur ascun des dits, ou ascun auters statutes, ou ascun person, que ad poier a faire leases per ascun des provisoes novelment invent & mise en Indentures; preignes vous bon advice & councel sur le view & bon consideration de eux, in feasant de vre lease: Et mon espoir est que le report de ceux cases concernant Leases, voile reducer a lour memory ascun choses tendant al repose & quiet des poure fearmors.

(a) Co. Lit. 44. b. 6 Co. 37. b. 38. a.

Mich.

Mich. xxxi & xxxii Eliz.

In Bank le Roy, En Brief de Error.

Justice Windham's Case.

EN Trespas inter Francis Windham un des Justices del Common Bank Plaintiff, & John Debney & auters Def. en le Common Bank, pur Trespas fait en un pree, appell' Sextens Meadow en Trowse en le County de Norff. le case fuit tiel. Le Dean & Chapter del Saint & individed Trinity de Norwich fueront seisie del dit pree appell' Sextens Meadow, & dun auter pree en mesme le ville, appell' Cheesemeadow, & per Indenture desouth lour common seal in An. 37 H. 8. demisont Cheesemeadow al Howlins pur xl ans: Et puis 4 & 5 Ph. & M. demisont per Indenture desouth lour common seal Sextens Meadow aux dits Howlins & Debney pur xxi ans: Et puis cestascavoir 12 Eliz. le dit Dean & Chapter demisont al Nicholas Man ambideux les prees ove several Habendum; s. a aver & tener Cheesemeadow pur xl ans apres le fine del primer lease ent fait, & a aver & tener Sextens Meadow pur xl ans apres le primer lease ent fait, ove several reservation des rents. Le dit Man assigne son interest al John Hoe, que 15 Eliz. surrender, & prist novel lease per Indenture del dit Dean & Chapter desouth lour common seal (en quel les primer leases fueront recites) des ambideux les prees, Habendum sibi ab & post determinationem præd' seperalium dimission, viz. prædict' dimission præd. Rob. Howlins in forma præd' fact', & prædict' dimissionis præfat Roberto Howlins & Johanni Debney, &c. in forma præd' fact', sive esset per sursumredditionem, determinationem, &c. usq; ad finem & terminum

Moor 191. Cr. El. 199. 2 Leon. 106. Lit. Rep. 364.

minum 40 annorum extunc & pxim sequen, existen verum numerum annorum mentionat in dict' sursumreddit Indentur dicto Nicholao Man fait: Reddendo, &c. lancient rent severalment p les dits Meadows, issint q en effect le case est: Home fait lease de Sextens Meadow al A. p 10 ans, & de Cheesemeadow al B. p 20 ans, & puis p Indenture recitant les dits deux leases, fist lease al auter de ambideux p 40 ans, a commencer apres le fine ou determination des dits several demises faits al A. & B. Et puis le former lease de Sextens Meadow determine, & le lease de Cheesemeadow continue; & qnt le darrein lease quant al Sextens Meadow ore en question commencera fuit le question: Car si ceo ne commencera tanqz le lease de Cheesemeadow soit finie, donqs le Pl' ad enter devant son temps, car le former lease de Cheesemeadow ad uncore continuance. Mes si le dit Habendum in le darrein lease serra prise * respective ou distributive, (a) Reddendo singula singulis, issint q quant le lease en Sextens Meadow determine, le novel term pur 40 ans de ceo commencera, donques Judgmt doit estre done p le Pl. Et apres plusors argumts al barre & al Bench en le Common Bank, fuit resolve & adjudge q le Habendum en le darrein lease serra prise respective, cestascavoir, le lease de Sextens Meadow al John Hoe p 40 ans comencer (b) maintenant apres le fine del primer lease ent fait: Car chescu fait serra prise pluis (c) fortmt vs le grantor, & pluis beneficialmt p le grantee; & est pluis fort vs le lessor, & pluis beneficial p le lessee, daver le lease de Sextens Meadow a commencer maintenant apres lexpiration del primer lease ent fait q a targer tanqz le lease del Cheesemeadow soit finie. Come en (d) 9 E. 4. 42. b. & 19 H. 6. 4. a. si jeo release a vous touts actions qux jeo ay vs vous, & un auter, en cest case nient obstant les joynt pols touts actions queux jeo ay vs vous solement sont release, pluis beneficialmt p cesty a q release est fait, & pluis fortment vs luy q fait ceo; Et joint pols des parties serra per construction del ley prise respective & severalment. ¶ 1. Ascun foits en respect des several interests des grantors: Come si deux (e) tenants en common, ou seval tenants joyn en grant dun rent charge, uncore en ley cest grant serra several, comt q les pols sont joint, come Sir Robert Catlyn Chief Justice teign en Browning's Case, Pl. Com. ¶ 2. Ascun foits en respect des seval (f) interests des grantees, &c. come 19 H. 6. 63, 64. Garrantie fait a deux de certain terres, enurera come seval garranties en respect q ils sont sevalmt seisies, lun de part

* Mod. Rep. 33.
(a) Moor 191. Cr. Jac 259. 9 Co. 27. b. 10 Co. 85. b. 2 Rol. Rep. 411, 412. Cr. El. 471. Palm. 390. 1 Sand. 184.
(b) Jenk Cent. 272 Cr. Jac. 35, 259, 656, 10 Co. 85. b. Yelv. 183. 1 Bulst. 42. 1 Brownl. 147. 3 Keb. 85. 1 Sand. 184. Moor 191. 2 Leon. 106. Cr. El. 199. 3 Keb. 85.
(c) Jenk. Cent. 272 Lit. Rep. 371. Co. Lit. 42. a. 99. a. 183. a. 197. a. 6 Co. 36. a. Plowd. 103. b. 287. b. Winch. 96. 7 Co. 23. a. 8 Co. 145. a.
(d) Fitz. Release 14. 4 Co. 50. a. Br. Release 29.
(e) Plowd. 140. b. 161. b. 171. a. 289. a. b. Perk. Sect. 106, 107. Hetly 9. Yelv. 189. Co. Lit. 197. a. 267. b.
(f) Apres 19. a.

part des tres, & lauk del residue en severalty, 6 E. 2. tit.* Covenant Bř 49. Un joint (a) covenant prise sevšal en respect del sevšal interests des covenantees, vide 16 Eliz 337, 338. Dyer, inter Sir Anth. (b) Cook & Wotton, bon case. ¶ 3. Ascun foits en respect q̃ le grant ne p̃nder effect, mes a sevšal temps come 24 E. 3. 29. a. remainder limit al droit heirs de J. S. (c) & J. N. (J. S. & J. N. esteant en vie) en q̃l case les parols sont joint, & uncore les h̃rs prendront severalm̃t: Car ils ne joindront en action. ¶ 4. Ascun foits en respect de incapacity & impossibility des grantees a prender jointm̃t; Come lease fait al Abbot & (d) Seculer home; ou done a 2 homes, (e) ou a 2 femes, & a les heirs de lour deux corps engendres lenheritance est (e) sevšal, 7 H. 4. 17. Vide Chapmans Case, Plowd. Com. ¶ 5. Ascun foits en respect del cause del grant, ou ratione subjectæ materiæ: come 15 H 7. 14. a. lun (f) coparcener grant rent al 2 auts coparceners p̃ owelty de partition; com̃t q̃ les pols sont joint, uncore le cause del grant serra respect, & le rent serra del quality del tre, & p̃ c̃ ils averont le rent en degree & quality de coparcenary, & nemy jointm̃t. Et Knivet Chief Justice & Chancellor dit en 38 E. 3. 26. q̃ si 2 coparceners font feoffm̃t en fee, rendant rent a eux & lour heirs, les heirs de lun & lauk enheritera; p̃ c̃ q̃ lour droit en la terre fuit several, (g) 22 E. 4. 25. b. 2 (h) R. 3. 18. b. Joint submissiõ al arbitrem̃t prise severalm̃t en respect des several causes, &c. ¶ 6. Ascun foits, Ne res destruatur, & ut evitetur absurdũ, come en 6 H. 7. 7. b. in (i) Cessavit, ou le tenure est alledge p homage, fealty & rent, & le demandant count, q̃ in faciendo servitia p̃dict', cessavit, serra p construtiõ prise a tiels services solem̃t, de q̃ home poit cesser. (k) 17 E. 3. 1. b. & 2. a. Le Prior de Tikefords Case en Scire facias vš le successor del Prior, sur judgm̃t done en bř de Annuity pur arrerages en temps le predecessor, & del successor; le brief voit que le predecessor & successor nondũ reddiderunt: a q̃ exception fuit prise, que le predecessor fuit suppose nient a render c̃ q̃ le successor duissoit, & non allocatur; car reddend' singula singulis p reasonable construcc̃, les pols purront bien estoier, vide 21 E. 3. 48. a. in per q̃ servitia Fitzh. Nat. Bř 14. in Monstraverunt; Et le reason de touts ceux cases est, ou quod (l) res non destruatur, ou q̃ le grãt serra prist pluis fort vš le grantor, & prender effect cy pres come poit estre, solonq; lentention des parties. Et tiel construction concurre ove 2 des dits reasons en le principal case. ¶ 1. Ceo serr̃ pluis fortm̃t vš le lessee. ¶ 2. Cest con-

K struction

* Apres 19. a.
(a) Apres 19. a.
(b) 1 Anders. 53, 54. N. Benl. 228. 229. Dyer 337, 338 pl. 39. Apres 19. a.
(c) Co. Lit. 188. a. 2 Rol. 89. 13 Co. 57. Fitz. joinder in action 10. 30 Ass pl. 47.
(d) Perk. sect. 106. Lit. sect. 296, 297. Co. Lit. 190. a.
(e) Co. Lit. 183. a. b. 184. a. 8 Co. 87. a. 7 H. 4. 16. b. 17. a. Lit. sect. 283, 284. 1 Co. 84. b. 2 Anderson 12, 138. Br. jointenants 40.
(f) Hob. 172. Br. coparceners 6. Br. rent 8. Br. jointenants 20. 3 Keb. 215. Co. Lit. 169. b. Dyer 153. pl. 14. 29 Ass pl. 23. Fitz. partition 12. Plow. 134. b.
(g) Br. condition 182. Br. arbitrem̃t 41. 8 Co 98. a. b.
(h) Bridgman 91. Plowd. 289. b. Br. arbitrement 44.
(i) Fitz. cessavit 5. Br. cessavit 23. Br. faux latin 76. Doctrin. placit. 97, 289, 290.
(k) Fitz. brief 663.
(l) 1 Co. 76. a. 2 Co. 72. b. 8 Co. 95. b. 3 Keb. 288. 2 Jones 69. 5 Co. 55. b. Mod. Rep. 109.

struction concurrera ove lentent & meaning des parties: car aps le Habendum, & les numbre des ans, ceux pols sont add, existen verum numerū annorum in dict' sursumreddit Indentur mentionat, en ql Indenture le Habendum fuit several, issint q̃ lentent des parties fuit dav several comencemts en cest novel lease, &c. & le lessor & lessee ne unqs imagine mes q̃ le leases comencera severalmt, & nemy q le lessee expecter p̃ Sextons-Meadow, tanqz le lease de Cheese-Meadow, q̃ est un aut distinct demise, & distinct chose, finier. Et issint fuit adjudge; & le Pl' ad execution. Sur ql Judgmt un bt de Error fuit port; Et aps plusors argumts: Fuit resolve p Sir Christopher Wray, Sir Thomas Gawdy, & totam Curiā del Bank le Roy, q̃ le lease al Hoe av several comencemts. Et issint cest case fuit resolve p ambideux les Courts. Et puis en mesme cesty term en un case inter Pollard & Alcocke en le Court de Gards, Wray Chief Justice tient clerement; Que si home soit seisie de trois acres de terre in fee, & fait lease de un acre al A. p̃ vie, dun aut acre a B. p̃ vie, & del aut a C. en tail, & puis p fait (recitant les dits estates) covenant ove son frere, q̃ aps touts les dits estates finy & determine, il & ses heires estoieront seisie des dits 3 acres, al oeps son frere en tail, &c. q̃ en cest case maintenant p le mort de B. le frere avera le acre demise a B. & ne targera tanqz touts lestates, s. & laut estate p̃ vie, & le estate tail soit finie: Mes reddendo singula singulis, p le covenant lestate en le several acres veste maintenant en le frere, a prender effect en possession come les several estates en possession finie ou determine, quod fuit concessum p totam Curiam. Et en le Case de Pollard, Wray cite, & rely sur le dit Case de Justice Windham. Et puis les Pl' en bt de Error perceivant lopinion del Court, ne proceeda en lour brief de Error.

2 Leon. 106. Cr. El. 199. Jenk. Cent. 272. Lit. Rep. 220. 2 Bulst. 132.

Trin

Trin. xxxiv Eliz.

In Bank le Roy.

Brudnel's Case.

THomas Brudnel Administrator de Anthony Rone, port actiō de Det sur obligač de 200 l. vers Tho. Skidmore, & ad judgmt de record en le Cōmon Bank, & morust, Robert Brudnel & John Brudnel executors del dit Tho. Brudnel suont Scire facias sur le dit Judgmt, & proces continue tanq; le dit Tho. Skidmore fuit utlage. Et ore le dit Tho. Skidmore port bř de Error. Et nota, appiert p le record certifie, q le dit Tho. Brudnel fuit administrator del dit Anthony, durant le minority de Edward, Jeromy, Humfrey & Anne, les children del dit Anthony. Et il avre en son count, q les dits Edward, Humfrey & Anne fueront en vie, & deins age; & ne (a) avre q le dit Jeromy fuit en vie, ou deins age. Et le Councel del Pl' assign p error, q qnt administration est commit al un, durāt le (b) minority de 3 si lun de eux morust, ou devoign de plein age, lentier authority cessera. Car diversity fuit prise enter limitation annex a un estate ou interest, & un collateral & nude limitač nient couple ou conjoin a un estate ou interest, de q nul survivor poit estre. Come si home lessa a deux (c) durant lour vies, la si un morust, s estate survivera: Mes si lease soit fait al A. durant le vie de B. & C. sans dire, & durāt le vie del (d) survivor de eux, la si un de eux morust, lestate (come fuit dit) fuit determine. Mes fuit respond & resolve p Sir John Popham Chief Justice, & totā Curiam, q en m le case mise p le councel del Pl', si lun de cest a q vies devy lestate nest determine, mes A. avra tre durant le vie de survivor de eux. Et issint fuit resolve p tours les Justices al Mich. Term

(a) Cr. Car. 50.

(b) 1 Brownl. 46, 47. 2 Brownl. 83. 1 Leon. 74.

(c) Mod. Rep. 187.

(d) 2 Brownl. 292. 11 Co. 3. b. 13 Co. 66.

tenus a S. Albons añ 5 & 6. Eliz. Reginæ, car A. ad franktenement p voy de limitac̄ dun estate durant les vies de 2 homes, & p constructiõ del ley, durant le vie del survivor de eux: Come si home fait lease de terre a 2 homes durant lour vies, & ils assign lour estate ouster, ore lassignee ad estate p̄ vie de 2 hões, & si lun morust, il avera le tre durant le vie del survivor. Et deux diversities fuer̄ prise & agrée en cest case. 1. Enter un limitac̄, come le case devant, & un condition: Car si home demise tre p̄ 100 ans, si A. & B. cy longm̄t vivera, en cest case si lun de eux morust, le lease est (a) determine, car le lease fuit conditional, & nemy determinable p limitac̄ dun estate: Et la vie de home est collateral, quñt al lease q̃ nest forsque chattel. Le 2 diversity fuit prise int̄ limitac̄ dun estate de franktenem̄t durant vies q̃ est le usual & ordinary limitatiõ de franktenem̄t; & collateral determinations, come durant le temps q̃ C. & D. serra del Inner-Temple, ou durant le temps q̃ C. & D. serra cõmorant in Norff. ou serra Justices de Peace, & similia: car en ceux cases le failer del un, determiner lestate: Mes le dit point move p̄ un error en le case al barr̄, ne fuit expressem̄t resolve, p̄ c̄ q̃ aut̄ error fuit move; p̄ q̃ sans question le Judgm̄t fuit reverse, & c̄ fuit q̃ quñt ladministrator ad Judgm̄t, & morust, ses executors ne poient suer execution del dit Judgment: Car nul avera execution de cest Judgm̄t, mes cestuy q̃ serra subject al paym̄t des dets del primer intestate, & c̄ ne sont pas les dits executors. 26 H. 8. f. 7. Et est adjudge in 28 H.8. report p Sergeant Bendloes, q̃ les Administrators dun executor (b) navont executiõ dun Judgm̄t done p̄ lexecutors. Et lopinion de tout le Court fuit, q̃ le dit utlagary sur cest Judgment fuit erronious, & a cest cause fuit reverse.

(a) Raymond 126. 1 Rol. Rep. 197, 309, 310. 3 Bulstr. 31, 131. Moor 400 876. Cr. Car. 378. Cr. El. 414. Co. Lit. 219. b. 1 Rol. 832. 11 Co. 3. b. 1 Anderson 161, 162. Owen 52. Goldsb. 71, 72. 1 Anderson 151. pl. 199. Mod. Rep. 187. Cr. Jac. 377, 378. 1 Leon. 74, 103. 1 Brownl. 30, 39, 180, 181. 1 Vent. 163. Palm. 23. 2 Vent. 74, 108.

(b) 1 Co. 96. a. 1 Rol. 890, 907. Went. 148, 149. Yelv. 33, 83. Moor 4, 139, 680. 1 Jones 214, 248, 385, 386. O. Benl. 2. pl. 5. N. Benl. 18. pl. 24. Cr. Jac. 4, 394, 459. Cr. Car. 167, 227, 451, 459. 2 Sand. 149. 1 Sid. 29, 317. 323. Cr. El. 435. 2 Sid. 122.

March 9. 1 Anders. 23, 24. Finch 4.b. 5.a. 17 Car. 2. cap. 8. 30 Car. 2. cap. 6. Swinb. Dyer 47. pl. 12. 112. pl. 51. 2 Brownl. 144. Noy 81, 82. Latch 140. Palm. 443.

Mich. xxxvi & xxxvii Eliz.

Rot. 1634. In Communi Banco.

Henstead's Case.

LE case fuit tiel: Feme tenant ꝑ vie dun mease & certain t̃re en Shoram in Kent fist lease a volunt, rendant rent; & puis prist baron, & el & sa baron port action de Det ꝑ les arrerages ap̃s le marriage; & si le lease a volunt fuit determine p le entermarriage ou nemy fuit le q̃stion. Et fuit agree p totã Cur, q̃ le volunt ne fuit determine (a) per lentermarriage: car coment q̃ la feme p prisel del baron, ad submit luy mesme al volunt sa baron come sa teste, uncore entant q̃ c̃ poit estre ꝑjudicial al baron dau le lease determine (car donq̃s il perdra le rent destre pay al prochein jour apres le marriage, & ne poet estre en ascũ manner prejudicial al feme, si le lease cõtinue, mes pluistost a s̃ benefit. Et generalmt poit ẽe grand prejudice a touts barons q̃ entermarry ove femes q̃ur ont tenants a volunt ꝑ le pder de lour rents.) A ceux causes fuit resolve, q̃ sans expres matter fait p le baron ap̃s le marriage a determiner le volunt, c̃ nest determine. Mesme la ley, si lease soit fait al feme (b) a volunt, & el prist baron, le volunt continue nient obstant le entermarriage. Issint si lease a volunt soit fait a (c) trois, rendant rent, & lun mourust, c̃ nest determination del volunt, & coment q̃ riens poit survive, uncore entant q̃ chescun joint est possesse p my & p tout, ils sert̃ charge ove lentier rent: Et issint le Quære en 10 Eliz. (d) 269.b. bien resolve. Mes en le case al barre ap̃s le marriage, la feme mesme ne poit countermand ou determine le lease a volunt, nient pluis q̃ lou el & (e) sa baron fait lease a volunt rendant rent durant le coverture,

(a) Kelw. 162. b. 163. a. Hetl. 72. 1 Rol.861.Cr.Car. 304. Co.Lit.55.b.

(b) Co. Lit. 55.b. 1 Rol.861.Cr.Car. 304.

(c) Dyer 269. pl. 20.

(d) Dyer 269. pl. 20.

(e) 1 Rol.861. Co. Lit.55.b.

verture; ou si lease soit fait a eux a volunt: car el ad surmit luy mesme & tout sa volunt a sa baron; & issint un feme covert poit aver tenant a volunt, & estre tenant a volunt, & uncore el mesme ne poit ceo countermand, pur ceo que el per sa entermarriage ad mise sa countermanding power en cest case (que ne concern franktenement ou enheritance) en le bouch de son baron. Auxy si baron (a) & feme demise terre a volunt, rendant rent, & le baron morust, ceo nest countermand del volunt, mes le lease continue. Issint fuit dit, si 2 (b) Jointenants fait lease a volunt rendant rent, & lun morust, tout survive al auter, & si le lessee continue son possession, le survivor avera action pur lentier rent pur le privity, & ne serra countermand pur son moiety pur le mischief que poit ensuer al lessors, & eo potius pur ceo que nul mischief ou prejudice poit accresser al lessees en tiel case.

(a) 1 Rol. 861. Co. Lit. 55. b.

(b) 1 Rol. 861. Co. Lit. 55. b.

Mich.

Mich. xxxix & xl Eliz.

Que commence Paschæ xxxviii in Communi Banco.

Ive's Case.

IVE port Action de Wast ꝟs Sammes, & counta de un demise al Def. del Manor de Tottenham in Com̄ Essex p̄ 30 ans: Le Def. plead non dimisit, & p special ꝟdict fuit trove, q̄ le lessor fist lease p̄ 30 ans del dit Manor, except touts boys & subboys cresceants, ou esteant sur le Manor: Et puis fist second lease a m̄ le lessée de tout le bois & subbois cresceants ou esteant sur le dit Manor p̄ t̄me de 62 ans, sans impeachm̄t de wast: Et puis fist un tierce demise de le dit Manor al dit lessée p̄ 30 ans, sans exceptiō; dab commencem̄t a jour a vener, s. del expiratiō del dit primier lease de 30 ans; Et puis le t̄m de 30 ans expire, le lessée coupa arbres, Ive en reꝟsion port action de Wast, & fuit adjudge p̄ le Pl'. En cest case 3 points fuer̄ resolve. ¶ 1. Que p le (b) exception del boys & subboys cresceant, ou esteant sur le Manor, le soil m̄ est except, (a) 14 H.8. 1.a. b. accord; & p nosme de boys poit ēe demand & recov, & que ceux pols (cresceant ou esteant) sont pols de abundance, car sans eux le ley voil' imply tant, & (c) expressio eorum q̄ tacite insunt, nihil operatur: car p le demise de boys & subboys sur le Manor, est imply q̄ ils sōt cresceants, & p̄ t̄a demiser touts boys sur le Manor, & touts boys cresceants sur le Manor, est tout un. Et issint fuit auxy adjudge Trin. 7 Eliz. Reg. en Bank le Roy, come la fait dit. Vide 46 E.3.22.b. 28 H.8. Dyer (d) 19. 33 H.8. Br. (e) Reservation 39. 7 E.6. Dyer (f) 79. &c. & issint un q̄stiō en nostre livres

2 Anderson 51. Lib. 11. f. 52. a. Cr. El. 521, 522.
(a) 3 Bulstr. 290. Dall. 11. pl. 11. Br. exception 2. Br. trespass 167. Palm. 497.
(b) Dall. 11. pl. 11. 3 Bulst. 290. 2 Rol. 455. 11 Co. 49.b. 47.b. Cr. El. 522. 1 Rol. Rep. 95, 96, 98. Co. Lit. 4.b. 44 E.3.34.b. Cr. Jac. 487, 488, 524. Perk. §.642, 643. Poph. 146. 2 Brownlow 231.
(c) 8 Co. 56. b. 145.a. 4 Co. 73.b. 11 Co. 60.a. 10 Co. 39.a. 2 Rol. Rep. 393. Latch 25. Palmer 433, 437. Co. Lit. 191.a. 205. a. Wing. Max. 235. 2 Inst. 365. Lit. Rep. 111. 2 Sand. 351. 2 Bulst. 131. Mod. Rep. 190. Hard. 92. 1 Rol. Rep. 310. Hob. 170.
(d) Dyer 19. pl. 110, 111. 1 Leon. 49. 3 Bulst. 290. Co. Lit. 4.b.
(e) 11 Co. 47.b. 3 Bulst. 290.
(f) Dyer 79. pl. 48. 11 Co. 47. b. Co. Lit. 4. b. 3 Bulst. 290.

bien

bien resolve. ¶ 2. Nient obstant le dit exception, le boys remain pcel del (a) Manor, & p le demise del Manor passer, p̄ c̄ q̄ le frankteneṁt remain entier, & le lessor remain tenant al chescun Præcipe, & ne besoign ascun forprise, vide Plow. Com̄ f. 140. (b) Fulmerstons Case. Auterm̄t dun lease p̄ vie ove tiel exception, causa patet. Et p̄ c̄ fuit resolve, q̄ p le lease de Manor le boys passer, vide (c) 38 H.6. 33.b. le Roy seisie dun Manor a q̄ avowson fuit appendant, lessa le Manor (sans pler del advowson, p q̄ c̄ ne passe) p̄ vie, & puis grant le reversion, Habend' una cum Advocatione, ladvowson ne passa, car durāt le vie del lessee, c̄ ne fuit appendant. Sur q̄ est dee observe; Que si home grant un advowson appendant p̄ vie, le rev̄sion est appendant al Manor: Mes q̄nt home lessa le Manor pur (d) vie, except ladvowson, ladvowson en possession ne poit ēe appendant al rev̄sion del Manor expectant sur estate pur vie: Auterm̄t sur estate p̄ ans. ¶ 3. Que p lacceptance del future lease a cōmencer diverse ans puis, le dit lease del boys p̄ 62 ans fuit maintenant (e) surrender, p̄ c̄ q̄ le lessee p acceptance de c̄ ad affirme le lessor dav̄ ability a fair le novel lease, le q̄l il nad, si le primer lease estoiera: Come si lessee pur 20 ans prist lease p̄ 3 ans, a cōmencer 10 ans aps, c̄ est maintenāt surrēder de tout le t̄m; car ne poit ēe surrēder del darrein 10 ans, & remain p̄ le primer 10 ans, & issint a fair fraction del t̄m; ne cesty q̄ ad lease p̄ 20 ans poit surrender le darrein 10 ans p ascun expresse surrender, savant a luy les primer 10 ans. Vide 14 H.8.15. 2 Mar. 112. 4 Mar. 141. 3 Eliz. 200. 10 El. 272. 11 Eliz. 280. 35 H.8.57. 21 H.7.6. 31 Ass. pl. 26. 32 H.8.46. 37 H.6.17. 14 H.7.37. 21 H.7.12,40. 13 R.2. tit. Dower, 40 E.3.24,43. 41 E.3.13. 44 E.3.25,26. 45 E.3.13.

(a) Co.Lit. 324.b.
(b) Plowd. 103.b. 104.
(c) Co.Lit. 324.b. 325.a. Fitz. grant 15. Hutt. 89. Br. grant 60. Br. patent 29. Plowd. Com. 152. b. 399. a. b. 2 Rol. 121. Plowd. 103. b. 104. b. 11 Co. 47. b.
(d) Co.Lit. 324.b. 325.a. 1 Rol. 233. 11 Co. 50.a. Hutt. 88, 89. Dyer 57.b.
(e) Cr.El. 264, 522, 605, 873, 874. Co. Lit. 218.b. 338. a. 2 Rol. 496. 10 Co. 52, 53. a. 67. b. Poph. 8, 9. 2 Leon. 188. 3 Leon. 247. 4 Leon. 30. Dall. 74 Moor 196, 358, 636, 637. 2 Andersf. 52, 192. Dyer 46. pl. 9. 57, 58. pl. 2, 3. 112. pl. 49. 140. pl. 43. 177. pl. 35. 200. pl. 62. 280. pl. 13. 349. pl. 15. Perk. §. 617. 14 H.8.15.a. Br. lease 14. 2 Rol. Rep. 171, 406. Lit. Rep. 269, 273, 282. Lane 7. 6 Co. 69.b. 37 H.8. 18.a. Plowden 107. b. 194.b. Br. surrender 14, 35. 2 Co. 17.b. 7 Co. 38. a. Raym. 148. O. Benl. 57. Kelw. 70.b. 21 H.7.5.a.b. Br. estoppel 210. 2 Sid. 138.

Trin. xli Eliz. Reg.

Que commence Hill. 40 Eliz. Rot. 747.
In Communi Banco.

Saunder's Case.

SAunders port action de Wast vs Marwood assignee del term en le tenemt, pur wast fait in fodendo carbones maritimos. Le Def. plede en barre q le primer lessee, q open le mine, grant a luy tout son interest en le terre cum omnibus pfic (Except & semper reservatis sibi & hæred' suis tot benefic & pfic Miner, Anglice, the Coal Mine in præd' pcell terræ, ac omnibus arboribus maeremii:) & avere q le dit mine al temps del assignmt, & uncore, est open: Sur q le Pl demurre en ley. Et sur grand deliberation fuit adjudge p le Pl. Et en cest case 3 points fueront resolve. ¶ 1. Si home ad tre, en part de ql est un mine de coal apert, & il demise le tre a un p vie, ou p ans, le lessee poet (a) foder en c: Car entant q le mine est apert al temps, &c. & il demise tout le tre, serra entend q son entent est icy general, come son demise est, s. il prendra profit de tout le tre, & p consequens del mine deins c, vide (b) 17 E. 3. 7. a. b. John de Hulls Case accord'; & issint le doubt in Fitzh. Nat Br 149. C. bien explain. ¶ 2. Si le mine ne fuit (c) apert, mes include deins le bowels del tre al temps del demise fait, en tiel case p lease del tre le lessee ne poet fait novel mines; car c serra wast, Fitz. Nat Br 59. & 22 H. 6. 18. b. accord'. ¶ 3. Si home ad mines occult deins s tre, & lessa s tre, & (d) touts mines deins c, la le lessee poet foder p eux; car (e) quando aliquis aliquid concedit, concedere videtur & id, sine quo res ipsa esse non potest, Et ove c accord

1 Brownl. 241. Cr. El. 683.

(a) Co. Lit. 54. b. (b) Fitz. wast 101. (c) 1 Siderfin 152. 2 Rol. 816. Latch 190. Co. Lit. 54. b. Hob. 234. (d) F. N. B. 149. c. Co. Lit. 54. b. Latch 190. Hob. 234. 2 Rol. 816. 2 Jones 72. Hutt. 19. 2 Bulstr. 252. 1 Ventr. 45. (e) Apres 47. a. Hob. 234. 2 Bulstr. 252 12 Co. 13, 130 Co. Lit. 56. a. 153. a. 2 Inst. 306. Moor 218. Cawley 246. Hawks Max. 258. 2 Sid. 39.

accord 9 E.4.8. ou est dit, q̃ si home lessa son t̃re al aut̃, & en c̄ est (a) mine (q̃ est dẽe entend dun mine occult) il ne poit foder p̃ c̄; mes sil lessa s̃ t̃re, & touts mines deins c̄, donq̃s com̃t q̃ le mine soit occult, le lessée poit foder p̃ eux, & ꝑ consequence le foder del mine en le principal case fuit waste in le primer lessée. ¶ 4. Fuit resolve, q̃ com̃t q̃ le mine fuit primerm̃t open ꝑ le primer lessée, uncore si son grantée foder en c̄, c̄ est wast en luy. ¶ 5. Fuit resolve q̃ lexception (b) fuit void, car primerm̃t ꝑ lexception del profit del mine; ou del mine mesme, le t̃re nest except: & donq̃s ensuist, q̃ il ad except c̄, q̃ il ne poit av ou prender: cõe si home assign s̃ t̃m, & except les arbres de meresme sur le t̃re, ou le argil, ou clay deins le t̃re, c̄ est void, car ne poit except a luy chose q̃ nappent a luy ꝑ la ley. Et com̃t q̃ fuit dit, q̃ entant q̃ le lessée primerm̃t open le mine, & ꝑ c̄ cõmit wast, & issint ad (quodam modo) appropry c̄ a luy mesme, & ꝑ son tort ad subject luy mesme a perder le lieu waste, & treble damages; serra reason q̃ il poit reteiner c̄ a luy mesme, & issint continue punishable p̃ le wast de q̃ il fuit le primer author. Mes c̄ nient obstant fuit resolve ut supra, car s̃ tort q̃ il cõmit, ne poit devest le interest en le mine, esteant en le t̃re a luy demise hors del lessor, & p̃ c̄ il ne poit except a luy c̄ q̃ appent al aut̃. Et fuit adjudge Paschæ 28 Eliz. in Cõmuni Banco, Rot. 820. int̃ Foster & Myles Pl̃,(c) & Spencer & Borde Def. q̃ ou le lessée p̃ ans assigna ouster s̃ t̃m, except le timber trees, & puis larbres fueront succide, q̃ laction de wast fuit maintenable vs lassignee, car (d) lexceptiõ fuit tout ousterm̃t void p̃ les causes avantdits, quod nota bene. Et en cest case fuit dit, Si lessée p̃ ans devise s̃ t̃m al aut̃, & fait ses executors, & mourust, lexecutors font wast, & puis assent al devise, en cest case com̃t q̃ ent̃ les executors & le devisée c̄ ad relation, & le devisée est eins ꝑ le devisor, uncore action de (e) wast serra maintenable vs lexecutors en le tenuit. Issint si grantee dun t̃m sur condition fait wast, & puis le grantor ent̃ p̃ condition enfreint, laction de wast serra mainteinable vers le grantée en le tenuit, (f) 30 E.3.16.a.b. accord.

(a) 2 Bulstr. 252. 12 E.4.8.a Br.wast 126. 9 E.4.35.b.

(b) 1.Brownl.241. Cr.El. 683. Allein 81,82. 13 Co. 60. Cr.Jac.296. Poph. 195. 2 Bulst.6,8.

(c) Goldsb. 63. 1 Leon.48,49. Cr. El. 17, 18, 683. 13 Co. 60, 61. Co.Ent. 665. pl.3. 2 Bulstr. 6.

(d) 1 Leon.49. Cr. El. 17, 18, 683. 2 Bulst.6,8. Poph. 194.

(e) 1 Rol.Rep.248 2 Inst.302. Swinb. 324. Bridgm. 54.

(f) Fitz. wast 26.

Mich. xli & xlii El.

Rosse's Case.

INter Peter Rosse & Aldwicke in Ejectione firmæ, q̃ commence Paschæ 37 Eliz. Rot. 499. le case fuit tiel; Lease est fait al A. & ses assigns, Habendem a luy durant son vie, & les vies de B. & C. & si cest limitation durant le vie de B. & C. soit void ou nemy, fuit le q̃stion. Et fuit adjudge q̄ le limitation fuit bon, car ou fuit object, q̃ quant home ad 2 estates en luy, le greinder mergera le meinder, & q̃ estate p̃ son vie demesne est pluis hault q̄ p̃ le vie dun auť, & p̃ č estate p̃ son vie demesne & p̃ ťm dauťs vies ne poiēt consist; A č fuit respond & resolve, q̃ en le case al barre le lessée nad forsq; un estate, q̃ ad cest limitation, s. durant s̃ vie, & les vies de 2 auťs, & il nad q̃ un frankteneñt; & p̃ č ne poit estre ascun merging des estates en le case, mes il ad estate de frankteneñt a continuer durant ceux trois vies, & le survivor de eux.

Moor 398, 399. Gould. 157, 158. Cr. El. 491, 492.

1 Bulstr. 136. Cr. Jac. 282. Cr. El. 58, 182. 2 Bulstr. 135. Moor 8. Co. Lit. 41. b. 2 Leon. 1. 2 Rol. 445, 446, 472. 1 Rol. Rep. 178.

Mich.

Mich. xlii & xliii El.

In Bank le Roy.

Le Counteſs de Salop's Caſe.

Cr. El. 777, 784.

(a) Co.Lit. 57.a.
(b) Br. waſt 52.

(c) Cr. El. 777. 2 Inſt. 299. Stat. Glouc. c.5. Dr. & Stud. 60.a. 4 Co. 62.b. 6 Co. 43.a.

(d) Cr.El.777,784. Cr.Car. 187. Noy 51.Lit.ſect.71. Co. Lit. 57. a. 1 Rol. 860. 2 Rol. 555, 556. Raym.148.

(e) Co.Lit.57.a.Cr. El.784.18 E.4.27.b 11 Co.82.a. Moor 248.1 Leon.87,88. Goldsb.66, 67,72. Owen 52. Dyer 121. pl.17. Moor 248.

LE Counteſs de Salop port action ſur le caſe vers Rich. Crompton un Apprentice del Ley del Temple, & counta q̄ el demiſe a luy un meaſon a volunt, & quod ille tam negligenter & improvide cuſtodivit ignem ſuum, quod domus illa combuſta fuit. A q̄ le Def. plead rien culp̄: Et il fuit trove culp̄, &c. & fuit adjudge q̄ p̄ ceſt (a) permiſſive waſt nul action giſt, encounter lopinion de Brook in Abridḡ le Caſe de 48 E.3. 25.a. tit. (b) Waſt 52. Et le reaſon del Judgm̄t fuit, p̄ c̄ q̄ al cōmon ley nul remedy giſt p̄ waſt, ou voluntary ou ꝑmiſſive, vers leſſée p̄ vie (c) ou p̄ ans, p̄ c̄ q̄ leſſée ad intereſt en le t̄re ꝑ lact del leſſor, & fuit ſon folly a fair tiel leaſe, & nemy a reſtrainer luy per covenant, condition ou auterm̄t, que il ne ferra waſt. Iſſint, & p̄ meſme le reaſon un tenant a volunt ne ſerra puny p̄ permiſſive waſt; Mes lopinion del Littleton eſt bon ley fol. 152. ſi leſſée a volunt cōmit (d) voluntary waſt, s. in abatem̄t des meaſons, ou in coupant des boyes, la general action de treſpaſs giſt vers luy; car cōe eſt dit 2 & 3 Ph. & Mar. Dyer 122.b. quant tenant a volunt impriſe ſur luy a fair tiels acts, q̄ nul poit fair, mes le owner del t̄re, ceux amount a un determination del volunt, & de ſon poſſeſſion, & le leſſor avera general action de treſpaſs ſans aſcun entry. Et la 15 E. 4. 20. b. eſt cite, q̄ ſi (e) baily des biens, come de Chival, &c. occiſe eux, le baillor avera general action de trn̄s, car ꝑ le occiſer, le privity fuit determine. Mes fuit agrée, q̄ en aſcun caſes, q̄nt eſt confidence miſe en le party, laction ſur le caſe gira per negligence,

coment

coment que le Def. vient al possession per act del Pl'; come (a) 12 E. 4. 13. a. b. ou home baile chival a un pur safement garder, le Def. equum illum tam negligenter custodivit, quod ob defectum bonæ custodiæ interiit, laction sur le case gist pur cest infreind del confidēce: Issint 2 H. 7. 11. si mon (b) Shepherd, que jeo trust ove mes barbits, & per son negligence ils soient surrounds, ou autermt perye, action sur le case gist: Mes en le case al barre fuit un demise a volunt, fait al Def. & nul confidence repose en luy. Per que fuit agard que le (c) Pl' prist riens per sa Bill.

(a) Fitz. Action sur le Case 19. Br. Action sur le Case 97.

(b) Cr. El. 777, 784. Lit. Sect. 71. Owen 52. Moor 248. Dyer 121. pl. 17. Goldsb. 72.

(c) Cr. El. 777.

Mich. xliii & xliv Eliz.

En le hault Court de Parliament.

Case de Ecclesiastical Persons.

AL Parliament tenus en mesme cest Term sur le consideration de Bill pur confirmation des conveyances faits per les Subjects al Roigne, & des Letters Patents faits per le Roygne aux Subjects, Fuit resolve p les Chief Justices, Popham & Anderson, & per divers auters Justices assistants al Seigniors del Parliament en le Upper House, que leases faits al Roigne per Colledges, Deans & Chapters, Gardeins des hospitals, ou ascun auter ayant Spiritual ou Ecclesiastical Livings, encounter le provision del Act de 13 Eliz. (a) cap. 10. sont restrain per mesme le act, cibien come leases faits aux cōmon persons. ¶ 1. Pur ceo que les Ecclesiastical Persons sont disable per lact a faire ascun lease, gift, grant, feoffment, conveyance, ou estate, forsq; tantsolement en mesme le form come le statute

L prescribe;

Full. Ch. Hist. I. 10. p. 27.

(a) 10 Co. 60. b. 11 Co. 67. a. 70. a. 73. a. 75. b. 76. a. 1 Rol. Rep. 152, 155, 158, 160, 164, 166, 236. Carter 13. Hardres 302, 445. 1 Jones 21. Jenk. Cent. 255, 256. Devant 6. b. Cr. Argument 60. Co. Lit. 43. a. 44. b. 301. a. 342. a.

prescribe; Et sils sont disable a fait estates, donq̃s le Roygñ ne poet prender ascun estate de eux, q̃ nest garrant p le dit act, car comt q̃ le Roigñ p le common ley ad ability a prender c̃ unc̃ entant q̃ le Parliamt ad disable eux a fait estates, lestates fait al Roygñ encounter lact, sont void. ¶ 2. Lestatute de 1 Eliz. q̃ restrain Evesq̃s a faire estates, ad special (a) provision, q̃ ils poient faire estates al Roigne: q̃l prove q̃ si tiel provision nad estre fait pur le Roigne, entant q̃ le act disable Evesques a faire estates, le Roigne ne poit prender estate de eux encounter le ꝓvision del act, mes nul tiel ꝓvision est en le dit act de 13 Eliz. ¶ 3. En diverse cases le Roy est (b) lie p act de Parliamt, comt q̃ il ne soit (b) nosme en c̃, ne lie per expresse parols. Et p̃ c̃ touts statutes q̃ sont fait a suppresser tort, ou a toller fraud, ou a preventer le decay de Religion, lyet le Roy, comt q̃ il ne soit nosme, car Religion, Justice & Verity sont le sure supporters des corones & diadems des Roys. Et p̃ c̃ est agreé en 35 H. 6. 60. q̃ le (c) Roy serra lie p lestatute de Westm̃ 2. (d) c. 5. q̃ fait ꝓvision encounter tortious usurpations, comt q̃ le Roy ne soit nosme en le act. Issint en le Sr̃ Barkleys Case report p Mounsieur Plowden est adjudge, q̃ si donē en tail soit fait al Roy, il ne poit alien a defrauder cesty en revision, ou ses issue, mes est (e) lie p lestatut de Westm̃ 2. de donis cōditionalibus. Et le dit act de (f) 1 El. pvē q̃ acts q̃ restrain Ecclesiastical persons a degaster lour possessions, queux fuit done a maintainer le service de Dieu, liet le Roy, sinon q̃ special ꝓvision ad estre fait al contrary p m̃ lact; Et (g) summa ratio est quæ ꝓ religione facit. Sir Tho. Egerton Sr̃ Gardein del grand seal concurre en opinion ove les Justices avantdit en le principal case. Nota Lecteur, le dit Act de 13 Eliz. ad estre construe (h) beneficialmt a preventer touts inventions, & evasions encounter le voyer intent des feasors del Act. Et p̃ c̃ fuit tenus Pasch. 14 Eliz. in communi Banco in (i) Eitrues Case, q̃ si brief Dannuity soit port vs un Parson, ou un Vicar, sur un feigned prescription, ou per un grant per luy, le Patron & Ordinary, suppose destre fait devant lestatute, & il pria en aid del Patron & Ordinary, & perde per action trie, & tout ceo est feigned a fait evasion hors de cest act, que cest invention est prise deins le equity de ceo: Car coment que (k) lannuity charge le Parson, ou Vicar, & nemy les possessions, uncore c̃ est deins le mischief, s. impoverishing del successor, cause de dilapidations, & decay de spiritual Lyvings, & Hospitals, q̃ sont le mischief mention en le preamble,

(a) 11 Co. 71. b.

(b) 2 Inst. 358, 681 Co. Lit. 43. b. 99. a. 120. a. 11 Co. 70. a. b 72. a. 2 Sid. 69. 1 Rol. Rep. 152, 153, 166, 167. Cr. Car. 526.

(c) 35 H. 6. 61. a.

(d) Co. Lit. 344. b. 2 Inst. 353, 354, &c.

(e) Plowd. 243. b. 244. a. b. 248. b. 251. b. 252. a. 1 Co. 44. b. 48. a. 7 Co. 21. a. 23. a. 11 Co. 72. a. 1 Rol. Rep. 153.

(f) Rast. Leases 4.

(g) 1 Rol. Rep. 167 Hardr. 302. 10 Co. 55. a. Co. Lit. 341. a. 2 Bulstr. 53. Hob. 295. Hawks Max. 2. Wing. Max. 3.

(h) 11 Co. 76. a. Palm. 216. 1 Rol. Rep. 164. Co. Lit. 342. a.

(i) Eytrues Case, Pasch. 14 Eliz. in Communi Banco. 10 Co. 60. b. 1 Rol. Rep. 160, 164. Hob. 97. 11 Co. 69. b.

(k) Bridg. 30. Hob. 97. 10 Co. 61. a. 11 Co. 69. b. Cr. Car. 49. 1 Rol. Rep. 160.

preamble. Et nota cest parol (suffered) en le act fuit bien observe. Fuit adjudge in Cõmuni Banco, Mich. 37 & 38 El. inter le Dean & Chapter de Hereford, & Levesq; de Heref. & (a) Ballard; q̃ grãt dun pchein (b) avoidance dun benefice per le Dean & Chapt͡r fuit deins le purview de cest act. Issint la fuit resolve, si Dean & Chapt͡r grant rent (c) charge hors de lour possession, c̃ est restrain p lequity del act, & uncore le rent nest ascun part de lour possessions deins les parols del act. Ad estre tenus, q̃ ou un Archdeacon fist lease p̃ 3 vies solonq; cest act, & les lessees fesoiẽt lease p̃ cent ans, & Larchdeacon, Levesq;, & le Dean & Chapter confirm c̃, uncore c̃ ne liera le successor: Car si tiel confirmation ne serra dit conveyance deins cest act, lestatute servera pur petit ou riens, & le bon intention & purview del act serra defeat & defraud. Et fuit tenus 30 Eliz. en un case dependant p English Bill en Lerchequer Chamber, inter Hodges Pl͡, & (d) Newcomen Def. per Sir Roger Manwood Chief Baron, & touts les Barons del Exchequer, Que ou le Parson de Weston en le County de Gloucestr͡ ann̄ 9 Eliz. demise son Rectory al W. Hodges adonq̃s P͡son de m̄ le Rectory pur 50 ans, q̃ ann̄ 14 Eliz. per son fait assign ceo ouster a Sir John Throkmorton, Levesq; confirm cest lease ann̄ 17 Eliz. en le vie de le lessor, q̃ les dits confirmations fueront bon. Et en cest case deux points fuer͡ resolve. ¶ 1. Que entant q̃ le dit lease fuit fait devant lestatute de 13 Eliz. & issint nient restrain per le dit act, les (e) confirmations fait puis le dit act a perfecter le dit lease, ne fuer͡ deins le purview ou intention del act. ¶ 2. Fuit resolve q̃ le grant fait p Patron deldit lease, (f) impoꝛt en luy sibien un grant del term, come un confirmation de m̄ le term; & issint un fait de un m̄ chose, p un mesme person, a un mesme person, & a un mesme temps, enurera a deux sev͡al purposes, cestascavoir, a un grant del interest come lessee, & a un confirmation de mesme le interest come Patron: Come si (g) tenant pur vie grant rent charge a cesty en rev͡sion en fee, & il p fait grant c̃ ouster a un auter, & ses heirs, cest bon grant & confirmation aury a faire le rent bon a touts jours. Issint si (h) disseisor fait lease pur vie, le remainder al disseisee, & le disseisee grant le remainder ouster, ceo est bon grant & confirmation aury. Et en le principal case, le Seigniors del Parliam͡t apres les dits resolutions esteant infoꝛme, q̃ diverse Deans & Chapters, Colledges, &c. avoyent faits leases al Roigne, intendant q̃ le Roigne ne fuit lie per le dit act de 13 Eliz. cause un clause

(a) Cr. El. 440. Levesq; de Heref. Case, Mich. 37 & 38 Eliz. in Communi Banco.

(b) Cr. El. 207, 690. 3 Co. 59. b.

(c) Dyer 370. pl. 62.

(d) Newcomen's Case Tr. 30 Eliz. in Lescheque r. 1 Rol. Rep. 171, 361. 2 Rol. Rep. 9. Co. Lit. 301. b. 1 Rol. 481. Cr. Car. 38. 3 Bulstr. 238. Bridg. 83.

(e) Cr. El. 18, 430. Cr. Jac. 53. Co. Lit. 301. b. 302. a.

(f) Co. Lit. 301. b.

(g) Co. Lit. 302. a.

(h) Co. Lit. 302. a.

desire adde en le primer branch del Act de Confirmation, que ceo nextendera a faire ascun lease, grant, &c. bon al Roigne per ascun ecclesiastical person, &c. que navoit power per les
9 Co. 73. a. leys & statutes del Realm a faire ceo, que est pluis que fuit en lact de Confirmations in ann 18 Eliz. que fuit fait a manifester le matter al lays gents. Car fuit tenus per les dits
11 Co. 76. a. Justices, q le general parols del dit act de 18 Eliz. nad enable tiels Ecclesiastical persons a faire leases, ou estates al Roign queux per le dit act de 13 Eliz. fueront sur bon & important considerations disable. Vide 17 E. 3. 40. & 21 E. 3. 46. le Roy esteant le test del bien publique, ne poit estre instrument a defeater le purview dun Act de Parliament fait pro bono publico.

Covenants,

Covenants, Agreements, &c. concernant Leases, Assurances, &c.

Pasch. xxv Eliz.

In Bank le Roy.

Spencer's Case.

SPencer & sa feme port action de Covenant vers Clark, assignee al J. assignee al S. Et le case fuit tiel; Spencer & sa feme p fait endent̃ demisont un mease & certain t̃re (del droit la feme) al S. pur term de 21 ans, p q̃l Indenture S. covenant pur luy, ses Executors & Administrators ove les Plaintiffs, q̃ il, ses Executors, Administrators ou Assigns, edifiet̃ un Brick-wall sur parcel del terr̃ demise, &c. S. assigne oustr̃ son term al J. & J. al Def. Et p̄ le non feasans del Brick-wall, les Pl' port̃ action de Covenant v̄s le Def. come assignee. Et apres plusors arguments al barr̃, le case fuit fort bien argue & debate p les Justices al Bench, Et en cest case, ceux points fuer̃ unem̃t resolve per Sir Christopher Wray Chief Justice, Sir Thomas Gawdy, & tout le Court. Et mults div̄sities prise & agree concernant expresse covenants & covenants en ley; & queux de eux curget̃ ove la terre, & q̃l de eux sont collateral, & ne curget̃ ove la terre; & ou lassignee serra lie sans nosmer de luy, & ou nemy; & ou il ne serra lie, com̃t q̃ il soit expressem̃t nosme, & ou nemy. 2 Bulstr. 281, 282 Moor 159.

¶ 1. Quant le covenant extende al chose en Esse parcel del demise, le chose destre fait per force del covenant est

quodamodo annexe & appurtenant al chose demise, & curgera ove la terre, & liera l'assignée (a) coment q̃ il ne soit lie p expresse parols: Mes quant le covenant extende al chose q̃ nad essence al temps del demise fait, ceo ne poit estre appurtenant ou annexe al chose que nad essence: Come si lessee covenant a repairer les measons a luy demise durant le term; ceo est pcel del contract, & extend al supportation del chose demise, Et p̃ ceo est quodammodo annexe & appurtenant aux measons, & lyera lassignée, coment que il ne soit lie expressemẽt p le covenant; Mes en le case al barre, le covenant concerne chose q̃ ne fuit en Esse al temps del demise fait, (b) mes dẽe novelment fait en apres, & pur ceo lyera le covenantor, ses executors, ou administrators, & nemy lassignée; car le ley ne voit annexe le covenant al chose que nad essence.

(a) Moor 27, 399. Cr. El. 457, 552, 553. 1 Rol. 521, 522. Apres 24. 1 Sand. 239. Cr. Jac. 125. Cr. Car. 222, 523. 1 Jones 245. 1 Siderf. 157. 1 Andersf. 82.

(b) Cr. El. 457. Cr. Car. 439. Dyer 14. pl. 69. 1 Andersf. 82. Moor 159.

2. Fuit resolve, que en cest case, si le lessée ust covenant pur luy & ses (c) assignées, que ils ferra un novel mure sur ascun part del chose demise, que entant que ceo est destre fait sur la terre demise, que ceo lyera lassignée, car coment que le covenant extend a chose destre novelment fait, uncore ceo est destre fait sur le chose demise, & le assignée est a prender le benefit de ceo, & pur ceo lyera lassignee p expresse parols. Issint del auter part, si garranty soit fait al un, ses heirs & assigns p expresse parols, lassignée prendera le benefit de ceo, & avera (d) Warrantia Cartæ, Fitz. Nat. Br. 135. & 9 E. 2. Garr de Chres 30. 36 E. 3. tit. Garr 1. 4 H. 8. Dyer 1. Mes coment que le covenant soit pur luy & ses assignées, uncore si le chose dẽe fait, soit meremẽt collateral al terre, & ne touche ou concerne le chose demise en ascũ sort, la lassignée ne serra charge: Come si le lessée covenant pur luy & ses assigns de edifier un mease sur la terre le lessor, q̃ nest ascun parcel del demise, ou a paier ascun collateral summe al lessor, ou al estranger, ceo ne lyera lassignee, pur ceo q̃ ceo est meremẽt collateral & en nul manner touche ou concerne le chose q̃ fuit demise, ou q̃ est assigne ouster & pur ceo en tiel case lassignee del chose demise ne poit estre charge ove ceo, nient pluis que ascun auter estranger.

(c) Cr. Car. 25, 188. 1 Jones 223. 1 Rol. Rep. 360. Moor 159, 399.

(d) F.N.B. 135. d. Co. Lit. 384. b.

3. Fuit resolve, Si home demise (e) barbits, ou aux stock des aḡs, ou ascun auter biens personal, p̃ ascun temps, & le lessée covenant pur luy & ses assignées al fine del temps, a deliver autiels avers ou biens cy bone come les choses demises fuer, ou tiel price pur eux, & le lessee assigne les barbits ouster, cest covenant ne lyera lassignee, car c̃ nest q̃ psonal contract & fault tiel (f) privity q̃ est int le lessor, & le lessée, & ses assignees de

(e) 2 Jones 152. 1 Leon. 43. Swinb. 324.

(f) Cr. Car. 188.

de terre en respect del reversion. Mes en case de lease de biens personals nest ascun privity, ne ascun reversion, (a) mes merement un chose en action en le personalty, que ne poit lyer ascuns mes le covenantor, (b) ses executors, ou administrators, que luy represent. Mesme le ley, si home demise mease & terre pur ans, ove un stock ou summe dargent, rendant rent, & le lessee covenant pur luy, ses executors, administrators & assignes, a deliver le stock ou summe dargent al fine del term, uncore lassignee ne serra charge ove cest covenant: Car coment que le rent reserve fuit encrease en respect del stock, ou le summe, uncore le rent ne issuit hors del stock ou summe, (c) mes hors del terre solement; & pur ceo quant al stock ou summe, le covenant est personal, & liera le covenantor, ses executors, & administrators, & nemy son assignee: Et nest certain que le stock ou summe veignera al mains lassignee, car poit estre degaste, ou auterment consume, ou pery per le lessee, & pur ceo le ley ne poit determin̄ al temps del lease fait que tiel covenant lyera lassignee.

(a) 1 Leon. 43.
(b) Swinb. 324.
(c) Kelw. 153. b. 1 Anderſ. 4. Dyer 56. pl. 15, 16. 212. pl. 37, 38. 21 E. 4. 29.a. 3 Bulſtr. 291. 9 E. 4. 1. b.

¶ 4. Fuit resolve, Si home fait feoffment per cest parol (d) Dedi, q̃ imply garr̃, lassignee del feoffee ne voucher. Mes si home fait lease pur ans per cest parol (Concessi, (e) ou Demisi) que import covenant, si lassignee del lessee soit evict, il avera brief de Covenant: Car le lessee & son assignee ad les annuel profits del terre, q̃ accrescer per son labor & industry pur annuel rent, & pur ceo reason est quant il ad apply son labour, & imploy son cost sur le terre, & soit evict (per q̃ il perd tout) que il prendra tiel benefit del demise & grant, come le primer lessee puit, & le lessor ad nul auter prejudice que son especial contract ove le primer lessee avoit luy lie.

(d) 2 Inſt. 275. 4 Co. 81. a. 1 Co. 2.b. Co.Lit. 384.a. Yelv. 139. Perk. Sect. 124.
(e) 4 Co. 81. a. Yelv. 139. Co.Lit. 384. a. Perk. Sect. 124. Dall. 101. Cr. Jac. 73. 2 Inſt. 276. F.N.B. 134.h. Hob. 12. 1 Vent. 44. 1 Rol. 521.

¶ 5. Tenant ꝑ le curtesie, ou ascun auter q̃ vient en le Post, ne voucher (q̃ est en lieu dun acc̄) Mes si (f) gard soit grant ꝑ fait al feme q̃ prist baron, & la feme morust, le baron vouchera per force de cest parol (grant) comt q̃ il vient a c̄ ꝑ act en ley. Issint si home demise ou grant terr̃ al feme ꝓ ans, & le lessor covenāt ove le lessee, a repairer les measons durant le term, la feme prist baron & morust, le baron avera action de Covenant, cibn̄ sur le covenant en ley sur ceux parols (demise ou grant) come sur expresse covenant. Mesme le ley est dun ten̄ ꝑ Statute Merchāt, ou Statute-Staple, ou Elegit, dun Term & ceꝑ a q̃ lease ꝓ ans est vendue ꝑ force dascun execution, averoit acc̄ de Covenant en tiel case come chose annexe a le terre, comt q̃ ils vient al Term ꝑ act en ley: Come si home grant al lessee pur

(f) 2 Rol. 743.

pur ans que il avera tants del * estovers, come serviera a repairer son meason, ou q̃ il ardeṙ deins son meason, ou similia, durant le term, ceo est come appurtenant al terre, & curgera ove ceo come chose appurtenant in quecunqʒ maines ceo devien dra.

* Apres 24. b. F.N.B. 181. n.

¶ 6. Si le lessee p̃ ans covenant a repairer les measons durant le term, ceo (a) liera touts auters, come chose q̃ est appurtenant, & curge ove le terre in quecunqʒ maines que le term viendra, cibien ceux que vient a ceo p̱ act in ley, come p̱ act del party, car tout est un ayant regard al lessor, Et si le ley ne serṫ tiel, grād prejudice poit accresceṫ a luy; Et reason require que ceux que prendṫ benefit de tiel covenant, quant le lessor fait ceo ove le lessee, que del auter part il serra lie p̱ autiels covenants quant le lessee fait ceo ove le lessor.

(a) Devant 16 a.b. Apres 24. b. Cr. Jac. 240, 309, 439. 1 Jones 223. Cr. El. 373. 1 Sid. 157.

¶ 7. Fuit resolve, Que lassignee (b) del assignee aṽa action de covenant: Issint del Executors del Assignee del Assignee: Issint del Assignees del Executors ou Administrators de chescũ Assignee, car touts sont comprise deins cest pol (Assignees) car m̃ le droit q̃ fuit en le Testator, ou intestate, alera a ses Executors ou Administrators. Come si home fait garṫ a un, ses heirs & assignes, lassignee (c) del assignee vouchera, & issint serra h̃res del assignee. Mesme la ley del assignee del heirs del feoffee, & de chescun assignee: Issint chescun de eux aṽont bře de Warrantia Cartæ. Vide 14 E. 3. tit. Garṫ 33. 38 E. 3. 21. 36 E. 3. Garṫ 1. 13 E. 1. tit. Garṫ 93. 19 E. 2. tit. Garṫ 85, &c. car m̃ le droit q̃ fuit en lancester discendera al heir en tiel case sans expresse parols del heirs del assignes.

(b) 1 Rol. 521. 1 Rol. Rep. 81, 82. 2 Bulst. 281. Owen 151, 152.

(c) Cr. El. 534. Co. Lit. 384. b.

Nota Lecteur vostṙ anciēt liures: Car ils sont les foũtains hors de q̃ur ceux resolutions issuont, mes padventure p̱ ceux disputies les fountains mesme serrõt fait pluis clere & p̃fitable a ceux q̃ voilent faiṫ use de ceo: Pur example (d) in 42 E. 3. f. 3. le case est, Aiel, pier, & ii fits, laiel fuit seisie del Manor de D. dount un chappel fuit parcel; un Prior ove lassent de son Covent p̱ fait, covenant pur luy & ses Successors ove laiel & ses heirs, q̃ il, & son Covent chaunteṙ p̱ tout le semaign en son chappel, p̱cel del dit Manor, p̃ le Seigniors del dit Manor & ses servants, &c. layel del Manor enfeoffe un en fee, que ceo done al puisne fits & sa feme en tail, & fuit adjuge, que les tenants en tail, cõe (e) terreteñ (car leigne frere fuit heir) aṽa action de Covenant ṽs le Prior, car le Covent est a faiṫ chose q̃ est annexe al chappel, q̃ est deins le Manor & issint annexe al Manor, come est la dit. Et Finchden relate, q̃ il ad vieu adjudge,

(d) Co. Lit. 385. a. 1 Rol. 520, 521. Br. Covenant 5. Statham Covenant 3.

(e) Co. Lit. 385. a.

judge, q̃ deux (a) copercenets fieront particion de terre, & lun fist covenant ove lauter a luy acquiter dun suit, q̃ fuit due; & cest pcener a q̃ le covenant fuit fait alien, & le suit fuit arere & le feoffee port brief de Covenant vs le pcener de luy acquit del suit, & le brief fuit maintenable, non obstant q̃ fuit estrang al covenant, p̃ c̃ q̃ lacquital chiet sur le terre: Mes si tiel covenant fuit fait a chaunter Divine Service en le Chappel (b) dun auk, la lassignee nav̄a acc̄ de covenant: Car le covenant en tiel case ne poit estre annexe al Chappel, p̃ c̃ q̃ le Chappel nappertiēt al covenātee; cōe est adjudge en (c) 2 H. 4. f. 6. b. Mes la est agree, q̃ si le covenant ust estre ove le Snr del Manor de D. & ses heirs, Seigniors del Manor de D. & inhabitants in ceo, le covenant serra annexe al Manor, & la le terr̄ tenant av̄a laction de covenant sans privity del sank. Vide 29 E. 3. 48. & 30 E. 3. 14. Simpkin (d) Simeons Case, ou le case fuit: Que la Dame Bardolf per fait grant un gard al un feme, q̃ prist a Baron Simpkin S. vs qux la Roign port brief de Droit de garde, & ils vouch la Dame de Bardolf, & puis la feme morust, p q̃ le chattel (e) real survive al Baron, (& resolve q̃ le brief nabatera) le vouchee appiert, & demand q̃ aves vous a lier a garr̄? Le Baron mist avant, per que la Dame grāt a son feme devāt marriage le dit gard: Le vouchee demand Judgment pur deux causes; 1. Pur c̃ q̃ nul parol de garranty fuit en le fait: Quant a c̃ fuit adjudge, q̃ cest parol (f) (grant) en cest case de grant de gard (esteant chattel real) import en luy m̄ un garranty. 2. Pur ceo que le Baron ne fuit assignee al feme, ne privy: Quant a c̃ fuit adjudge, q̃ il vouchera, car cest garr̄ imply deins cest parol (grant) est en case de chattel real issint annexe al terre, q̃ le baron q̃ vient a ceo p act en ley, & nemy come assignee prendr̄ benefit de ceo. Mes fuit resolve p Wray Chief Justice, & totam Curiam, que cest parol (Concessi ou Demisi) en case de (g) franktenement, ou enheritance, ne import ascū garranty. 11 H. 6. 41. accord', Vide 6 H. 4. 12 H. 4. 5. 1 H. 5. 2. 25 H. 8. tit. Covenant Br. 32. 28 H. 8. Dyer 28. 48 E. 3. 22. Fitz. Nat. Br. 145. C. 146. & 181. 9 Eliz. Dyer 257. 26 H. 8. 3. 5 H. 7. 18. 32 H. 6. 32. 22 H. 6. 51. 18 H. 3. tit. Covenant 30. Vet. Nat. Br. tit. Covenant, 46 H. 3. 4. 38 E. 3. 24. Vide le statute de (h) 32 H. 8. c. 24. quel act fuit resolve a extender al covenants, qux touche ou concerne le chose demise, & nemy al collateral covenants.

(a) 1 Rol. 521. Co. Lit. 384. b. 385. a. 42 E. 3. 3. b. Br. Covenant 5. 1 Rol. Rep. 81.

(b) 1 Rol. 521.

(c) Co Lit. 385. a. Fitz. Covenant 13. Br. Covenant 17.

(d) Co. Lit. 384. a. 2 Rol. 743, 744. 3 Bulst. 165. Hob. 47. 1 Rol. Rep. 81. Cr. El. 436.

(e) 1 Rol. 345. Co. Lit. 351. a.

(f) Co. Lit. 384. a.

(g) Co. Lit. 384. a.

(h) 32 H. 8. c. 34. Moor 159. Cr Jac. 523. 2 Bulstr. 281, 282, 283. 1 Sand. 238, 239. Cr. Car. 25, 222. 1 Anders. 82. 2 Jones 152. Owen 152. Stiles 316, 317. Co. Lit. 215. a.

Mich.

Mich. xxix & xxx Eliz.

In Breve de Errore in Leschequer Chamber.

Slingsby's Case.

3 Leon. 160, 161. 2 Leon. 47. Jenk. Cent. 262.

SLingsby & Frances sa feme port action de Covenant vers Roger Beckwith en Bank le Roy, & count sur Indenture tripartite inter le Def. Roger Beckwith del primer part, William Vavasor, Francis Slingsby, & Eliz. soer le dit Roger del second part, & George Harvy, & le dit Frances (adonques sa feme) un auter des soers le dit Roger del tierce party. Et count q̄ le dit Roger Beckwith le Def. per le dit Indenture (a) convenisset, ꝑmisisset & concessisset ad & cum dictis Will & Francisco, & ad & cum p̄d' Georgio & Francisca uxore ejus, & assignat suis, & ad & cum quolibet, & qualibet eorum, quod præd' Rogerus ad sigillationem & deliberationē ejusdē Indentur, fuit legitime & solus seisitus de Rectoria de Aldingfleet in Com Ebor: Et sur cest Covenant issue fuit prise, & le Venire fac fuit de Vicinet Castri Ebor, & lissue per Nisi Prius fuit trie p̄ le Pl', & damag assesse: Sur q̄ Judgmt fuit don en Bank le Roy. Et ore en bre de Error en* Lesche-q̄r Chamber debāt Anderson Chief Justice del Cōmon Pleas, Manwood Chief Baron del Exchequer, Windham, Periam & Rodes Justices del Cōmon Bank, & Gent & Clark Barons del Excheq̄r, & de le Coif, Fuit resolve q̄ le dit Judgmt fuit * erronious: Car appiert p le mſans del Pl' m̄ en son count, q̄ les Pl' solemt ne poiēt maintainer action de covenāt, mes les auts covenātēes doiēt ad (b) joyn en actiō ove eux, nient obstāt ceux parols (& ad, & cum (c) quolibet & qualibet eorum,) Car q̄nt a ceux parols, cest diversity fuit agrée: Quant appiert per le count, q̄ chescun des covenantees ad, ou est dad several interest, ou estate, la quant covenant est fait ove les covenantees,

(a) 1 Bulst. 26.

* 27 Eliz. c. 8.

* 3 Leon. 161. Jenk. Cent. 262. 1 Bulstr. 26.

(b) 1 Bulstr. 26. 1 Sand. 155.

(c) 3 Leon. 161. 2 Leon. 47.

covenantees, & cum quolibet eorum, ceux pols (cum quolibet eorum) fait le covenant ſeveral en reſpect de lour ſeveral (a) intereſts; Come ſi home p Indenture demiſe al (b) A. Black Acre, al B. White Acre, & al C. Green Acre, & covenant ove eux, & quolibet eorum, q il eſt loyal owner de touts les dits acres, &c. en ceſt caſe en reſpect des dits ſeveral intereſts p les dits pols, & quolibet eorum, le covenāt eſt fait ſeveral. Mes ſi il demiſe les acres a eux jointmt, donqs ceux pols, cum quolibet eorum, ſont void, car home p ſon covenant (ſinon en reſpect de ſeveral intereſts) ne poit faire ceo primermt joint, & donqs a faire ceo ſeveral p les dits ou autiels pols, cum quolibet eorum: Car comt q divers perſons poient lier eux meſmes, & quemlibet eorum, & iſſint le obligation ſerra (c) joint ou ſeveral al election del obligee, uncore home ne poit (d) lier luy m a 3 & a cheſcun de eux a faire ceo joint ou ſeveral al election de ſeveral perſons pur un m cauſe: Car le Court ſerra en awerouſt p quer de eux a doner Judgmt, q le ley ne voile ſuffer, come eſt tenus en 3 H. 6. 44. b. la appiert q un port Replevyn vers deux perſons dun boef, quer fiet ſeveral (e) avowries, cheſcun de eux a p luy en ſon droit demeſne; Et la p adviſe de touts les Juſtices ambideux avowries abate p le inconvenience, q ſi ambideux les iſſues ſert trove p les avowants, le Court ne poet doner Judgmt a eux ſeveralmt dun m choſe. Auxy le covenantor en le caſe al barre ſet divers foits charge p un m choſe, & p ceo les dits parols, cum quolibet eorum, ſont en tiel caſe ſolſq parols de amplification & abundance, & ne poient ſever le joint cauſe de action. Et fuit auxy reſolve que un * intereſt ne poit eſtre grant jointmt & ſeveralmt: Come ſi home grant proxim advocationem, (f) ou fait leaſe pur ans de terre a 2 joyntmt & ſeveralmt, ceux parols ſeveralmt ſont void, & ils ſont joint. Iſſint ſi home fait feoffmt en fee p fait a 3 & garrant le terre a eux, & cuilibet eorum, ceſt garr eſt joint, & nemy ſeveral: Mes en tiel caſe ſi lour eſtates fueront ſeveral, lour garranty ſerra ſeveral accordant. Mes un power ou authority, come a faire livery, (g) ou a vender, &c. poet eſtre joint & ſeveral, car la ils nont aſcun intereſt ou action, mes ſont come ſervants al auters. Vide 16 Eliz. Dyer f. 337, 338. accord', Sir Anth. (h) Coke's Caſe, 6 E. 2. tit. Covenant (i) Br. 49. 12 H. 4. 18. in detinue. Et p ceſt error le Judgmt fuit reverſe. Auter error fuit aſſign concernant le viſne: Mes quant a ceo le Court ne monſtr aſcun opinion.

(a) Devant 7. b.
(b) Jenk. Cent. 262 Bridg. 63.
(c) Apres 21. b.
(d) 2 Brownl. 208. Yelv. 177.
(e) Plowd. 10. b. Manxels Caſe. Apres 38. b. 21 R. 2. Fitz. Avowry 262.
* Raym. 6.
(f) Jenk. Cent. 262 263.
(g) Jenk. Cent. 263
(h) Devant 8. a. 1 Anderſ. 53, 54. N. Benl. 228, 229. Dyer. 337, 338. pl. 39.
(i) 2 Leon. 47. Devant 8. a.

Paſch.

Pasch. xxxv Eliz.

Rosewel's Case.

Cr. El. 297, 298. (a) Cr. El. 9, 465, 466. 1 Rol. 466. Moor 143, 595, 596. (b) 6 H. 7. 4. a. Br. Condition 133. Fitz. Bar 149. Carter 205. (c) Apres 20. a. Br. Condition 247. Cr. El. 298. (d) 26 H. 8. 1. b. Br. Condition 1.

INter Moor & Rosewel fuit adjudge, Que si home bargain & vende terres en fee, & covenant de faire ouster assurance al bargainee come son Councel devisera; En cest case le bargainee (a) mesme, coment q̃ il soit erudite en ley, ne poit devise lassurance, mes ascun de son Counsel covient deviser ceo. Et ove ceo accord les liures in (b) 6 H. 7. (c) 11 H. 7. 21. a. car si le party mesme poit ceo deviser, donques ne serra plea adire, quod consilium non dedit advisamentum, Vide (c) 26 H. 8.

Pasch. xxxv Eliz.

In Bank le Roy.

Higginbottom's Case.

Cr. El. 298, 299. Moor 595, 596. 1 Rol. 424. Carter 205.

JOhn Stafford Armiger port action sur le case (que commence in Bank le Roy Hill. 34. Rot. 647. Glocestr) vs Ralph Higginbottom Parson de Littleton super Sabrinam, p̃ c̃ q̃ le Def. sur bon consideration en le Count mention, promise que il serra un bon & loyal estate & assurance en ley del Rectory de Littleton avantdit al Pl', discharge de touts former bargains, sales, &c. fait per le Def. durant les joint vies del Pl' & Def. come p le counsel erudite del Pl', sur request fait, serra advise; Et alledge que un Maurice Tovy fuit del erudite counsel del Pl', & done son advise al Pl', q̃ le Def. serra un

un lease p Indẽture al Pl' del dit Rectory ove les appurtenances, a aỽ a luy durãt lour joint vies, &c. & le Pl' done notice al Def. del dit advice, & reqst luy a performer, le ql a fait le Def. denia, &c. Le Def. plede non assumpsit, & trove fuit p le Pl'. Et fuit move en arrest de judgmt, q cest advise del counsel del Pl' coviẽt ẽe immediatemt doñ p le counsellor m al Def. & nemy al Pl', & il a fait notice, come supra. Et le counsel del Def. relient fortmt sur le livre de 11 H.7.21. (a) car la est tenus per touts les Justices, q le counsel covient ẽe done a cestuy q doit fait lestate, & nẽy al cesty ove q il est accounsel. Et ils inherẽt mults a le lre del livre. Mes sur considerac del livre, & sur le residue del dit case, aps en m le an f. 23. b. appiert plainmt; Devant 19. b. Br. condition 247. Cr. El. 298. Cr. El. 298.
Et issint fuit resolve, q lentenc des Judges ne fuit q le councel ne poit ẽe done, ou signifie al pty q serr lestate, mes solemt al covenantor, p c q est mater dont p entendmt cesty q serra estate (sans notice done) ne poit aỽ conusans. Et fuit resolve, q serra pluis apt q le counsellor donera s councel a cesty ove q il est accounsel, & il a notifier c a cesty q serra lestate; Et coment q il ad 2 ou 3 de s counsel, unc nul de eux poit doner advise a cẽy q serra lestate sans s request, car padventure il ne voet user lour advise en tiel case, & reason est q le counsel serra done al pty, ove q il est accounsel, car padventure il poit misliker c, & ne voile aỽ c notifie. 2. Est meins mischievous car si le pty m notifie aux advise a cesty q serra lestate, q le councellor done, si le covenantor conust c, il poit refuser, sil ne conust, & le councel notifie est accord a son covenant ou agreemt; sil pform c il est excuse, & si ne soit accord son covenant ou agreemt, il poit c refuser, & issint nul mischief al pty. Mes si le councellor doñ advise al cesty q serra estate, il poit ẽe ignorant le ql il soit de son councel ou nemy. Et puis Judgment fuit done p le Pl', p les causes alledge devant. Vide 8 E.4.1 & 2. 6 H.7 4.a. & 14 H.8.21.b. 1 Rol. 424. Perk. sect. 777. 1 Rol. 424. Cr. El. 298.

Hill. XXXVIII Eliz.

In Bank le Roy.

Stile's Case.

2 Rol. 22. Cr. El. 472.

(a) 2 Brownl. 291. Co. Lit. 143. b. 229. a. 2 Inst. 672. Cr. Jac. 429.

(b) Co. Lit. 35. b. 229. a. 2 Inst. 672. 2 Rol. 21.

INter Frampton & Stiles in Debt sur obligation; Le Def. dit q̃ fuit sur condition a pformer covenants en un Indenture hic in Cur̃ plat̃, & in vity le fait ne fuit indente, mes escrp Hæc Indentura. Et adjudge q̃ c̃ ne fuit (a) Indenture, comt q̃ soit en 2 parts, Car les parols dun fait ne poit fair c̃ indent: Mes al fesans dun Indenture covient ẽe un manuel act de indenting de (b) parchmt ou paper, & p̃ c̃ q̃ le Def. ne mẽe ascun Indenture, le Pl' ad Judgmt.

Paschæ XXXVIII Eliz.

Rot. 42. En Error, En Bank le Roy.

Sir Anthony Main's Case.

Co. Ent. 244. pl. 6. Jenk. Cent. 256. Moor 452, 453. Cr. El. 450, 479. 2 Ander. 18. Poph. 109, 110.

LE case en effect fuit, Que Sir Anthony Main demise certain t̃re al Scot p̃ 21 ans p Indenture, & covenant q̃ al ascũ tẽps durãt le vie de Scot, sur surrender de s̃ lease, Sir Anthony, &c. ferra novel lease durãt le residue des ans, & oblige luy m̃ a pformer les covenants, &c. Et ore en det sur le dit obligation p Scot vers Sir Anthony, il plead que Scot ne surr̃, &c. A q̃ Scot reply, & dit, que puis

puis le dit demiſe, Sir Anth. ad accept fine ſur Conuſans de droit come ceo, &c. & ꝑ m̄ le fine grant & rend le terre al conuſee p̄ 80 ans: ſur q̄ le Def. demurre en ley; Et fuit adjudg̃ p̄ le Pl'. Et en ceſt caſe 3 points fueront reſolve. ¶ 1. Que Sir Anthony Main ad infreint ſon covenant ſans aſcun (a) ſurrender fait, car ꝑ le dit fine levy ꝑ luy p̄ 80 ans, il ad (b) diſable luy m̄, ou a p̄nder ſurrender, ou a fair novel leaſe; & le ley ne inforce aſcun a fair choſe, q̄ ſerra vain & fruitleſs; (c) Lex neminem cogit ad vana ſeu inutilia pagenda: Mes ſerra vain a compeller luy a fair ſurrender a ceſty q̄ ne poit c̄ p̄nder; & com̄t q̄ le leſſee en ceſt caſe ꝑ les ꝑols del Indenture doit fair le p̄im̄ act, s. a fair ſurrender, uncore q̄nt le leſſor ad diſable luy m̄, non ſolem̄t a p̄nder le ſurrender, mes auxy a fair novel leaſe accordant al covenant, a ceſt cauſe le covenãt le leſſor eſt enfreint ſans aſcun ſurrender fait. Vide 32 E. 3. (d) tit. Bar. 264. & 21 E. 4. (e) 55.a. ſi vous ſoies oblige de enfeoff moy del manor de D. devant tiel feaſt, ſi vous faits feoffm̄t de cel manor a un aut̃ devant le dit feaſt, vous aves forfeit voſtre obligac̄, com̄t q̄ vous repurchaſe arere le terre devant le feaſt, p̄ c̄ q̄ vous fuiſtes un foits diſable a fair le feoffm̄t. Et ove c̄ accord Temps E. 1. tit. Covenant 29. ſi hõe leſſa un manor p̄ ans, & le leſſee covenant a garder les meaſõs del manor, & q̄nt q̄ fuit deins le manor en auxy bon eſtate q̄ il trova, durant le term, le leſſee fiſt waſt en meaſons, & en couper de keynes; le leſſor port bre de Covenant (f) devant le fine del t̃m p̄ les keynes, car pur eux fuit impoſſible q̄ le covenant ſerra ꝑform: Auterm̄t eſt des meaſons. Et ove c̄ accord Fitzh. Nat. Br̃ 145. K. & 12 E. 3. tit. Covenant 2. ¶ 2. Fuit reſolve, Si home ſeiſie de t̃res en fee, covenant denfeoffer J.S. de eux ſur requeſt, & (g) puis il fait feoffm̄t en fee des dits t̃res: ore en ceſt caſe J. S. av̄a actiõ de covenant ſans requeſt; Et c̄ en effect eſt tout un ove le principal caſe. ¶ 3. Fuit reſolve, q̄ en le caſe al barre, ſi le dit t̃m de 80 ans fuit forſq; un int̃eſt dun future t̃m, iſſint q̄ Scot nient obſtant c̄, poit fair ſurrender, uncore en tiel caſe Scot av̄a action de covenant ſans feaſans daſcun ſurrender; car voyer eſt q̄ il poit ſurrender, mes auxi voier eſt, q̄ Sir Anth. ap̄s tiel ſurrender ne poit fair novel leaſe, q̄ fuit leffect que le ſurrender producera, & p̄ c̄ entant q̄ le leſſor ad diſable luy meſme a fair novel leaſe, q̄ eſt leffect & fine del ſurrender, & ceo que il doit fair de ſon part; le leſſee ne ſerra inforce a fair le ſurrender, q̄ eſt le primer act deſtre fait de ſon part,

(a) Hardres 387. 2 Rol. Rep. 347, 348, 408. Hutt. 48. Winch 29. Cr. El. 450, 479. Jenk. Cent. 256. Moor 453. Poph. 109. Raym. 26.
(b) 1 Bulſt. 117. Perk. ſect. 767, 801. Lit. ſect. 355, 356, 357, 358. 1 Co. 25.b. Co. Lit. 221. a. b. 222. a. 2 Co. 59.b. 79.a. 13 H. 7. 23.b. Br. condition 26, 217. 44 Aſſ. 26. 20 H. 6. 34. b. Cr. El. 450, 479. Moor 323, 452, 453, 626. 2 Anderſ. 18. Poph. 110, 198. Hutt. 48. 1 Rol. 447, 448. 3 Co. 29.a.b. 10 Co. 49.b. 1 Rol. Rep. 168. Hardr. 387. 7 H. 4. 16.a. 8 Co. 83.a. O. Benl. 77.
(c) 2 Rol. Rep. 408. Hard. 387. b. Co. Lit. 127.b. 197. b. Apres 89. a.
(d) Cr. El. 479.
(e) 8 Co. 83.a.
(f) 7 Co. 15. a. F. N. B. 145. K. Moor 313, 323. 2 Rol. Rep. 332, 347. Godb. 335.
(g) 1 Bulſt. 117.

car p le surrender il pdra s viel tm, sans possibility daver le novel, solonq le covenāt del lessor; Et ē accord ove 14 H. 4. 19. a.
(a) 2 Rol. Rep. 408. Perk. §. 774. 14 H. 4. 18. b. Fitz. bar 190. Br. condition 42.
J (a) Parson del Esglise de G. fuit lie en un obligac de 100 l. al Prior de E. le condition fuit; Que si le Parson resign son Esglise deins certain tēps al Prior p un certain pentiō, cōe ils purt accorder, q donqs lobligac serra void, & puis & deins le tēps, le Prior & Parsō accord dun pentiō de 100 s. uncore le Parson refuse de resign. Et lopinion de tout le Court fuit, q comt q ils ont accord del pentiō, uncore le Parson nest lie a resign, tanq il soit sure de pentiō, & ē ne poit il ēe sans fait; Et p ē en tiel case le Parson nest tenus a resign, tanq le Prior ad tender lup un fait del dit pention, p q il serra sure de ceo.

Trin. XXXVII Eliz.

In Bank le Roy.

Laughter's Case.

Cr. El. 398, 399. Poph. 98. Moor 357. 2 Jones 96. 2 Rol. Rep. 216.

THomas Eaton Arm, & Roger Monox Gen port Det sur obligac de 400 l. port date 26 Septembris, anno 26 Eliz. vs Thomas Laughter; Le Def. demand oyer del obligac & condition: & appiert p lobligac, q Richard Ramsford fuit auxy lie en le dit obligac ove le Def. jointmt & severalmt; & le condition en effect fuit, That if the within bounden *Richard Ramsford*, after lawful Marriage had between him and *Jane Gilman*, Wife of *Henry Gilman* deceased, and together with the said *Jane* do, and shall lawfully sell and alien in fee simple, or fee tail, all the great Messuage, with the little Tenement thereunto adjoining, of the said *Jane*, situate in *London*, now in the Occupation of *William Fitzw.* Esq; If then the said *Richard Ramsford* do, or shall, either in his life-time purchase to the said *Jane*, and her Heirs and Assigns, Lands,

Lands, Tenements and Hereditaments, of as good right, and of as good value, as the Mony by him received, or had, by or upon his sale or alienation of the Premisses, shall amount unto: or else do, or shall leave unto her the said *Jane*, as Executrix, or by Legacy, or other good Assurance or Conveyance, as much Mony, as shall be by him received upon such sale, *&c.* That then, *&c.* & plead q̃ le dit Ramsford espouse le dit Jane 1 Decemb. an̄ 27. & q̃ le dit Jane morust 8 August 31. & le dit Rich. Ramsford luy survive. Le Pl' mre p voy de replicac̄, q̃ le dit Ramsford & Jane Paschæ 30 Eliz. p̄ 320 l. levioint un fine des premisses al John Thompson & Will' Kerwen, & al hēs de John Thompson, & q̃ le dit Ramsford ne purchase tres, tenemts ou hereditamts del value de 320 l. al dit Jane, & ses hēs, neq; reliquit pd' Jane post decessum ipsius Richardi, ut executrici, &c. Et sur cest plea le councellor del Def. demurr en ley. Et sur grand deliberac̄ judgmt fuit done p Popham Chief Justice, & totā Curiam, encounter le Pl'. Et le reason & cause del judgmt fuit, q̃ ou un condic̄ dun obligac̄ consist sur 2 pts en le (a) disjunctive, & ambideux sont possible al tēps del obligac̄ fait, & puis lun de eux deveign impossible p lact de Dieu, lobligor nest tenus a pformer lauť pt: car le condic̄ est fait p̄ le benefit del obligor, & serra prise beneficialmt p̄ luy, & il ad election a pformer lun ou lauť pur le saving del penalty de s̃ obligac̄; Et qnt lun part est deveign impossible p lact de Dieu, est cy beneficial p̄ luy, sicōe cest pt del disjunctive q̃ est deveign impossible, ust ēe solemt le condic̄ del obligac̄: Et issint qnt lun deveign (b) impossible p lact de Dieu, q̃ p nul industry il poit pform, s̃ obligac̄ est save, comt q̃ il ne pform lauť, quia (c) impotentia excusat legem. Et en le case al barre, entant q̃ Jane morust devant le dit Ramsford, issint il ne poit relinquy al dit Jane, ou cōe executrix, ou p legacy, ou auť assurance, tant des deniers, come serra p luy receive, &c. & issint cel part del disjunctive deveign impossible p lact de Dieu. Vide (d) 30 H. 6. tit. Barre 60. (e) 15 H. 7. 4. Dyer 9 Eliz. (f) 162. inter Arundel & Combe. Et le case en (g) 21 E. 3 29. b. nest semblable a cest case, car la al tēps del obligac̄ fait, & al tēps qnt le condic̄ fuit dēe perform, lun part del disjunctive ne fuit possible dēe pform, car la le hē de s̃ corps ne fuit in rerum natura.

(a) 1 Rol. 447, 450. 4 Co. 52. b. Mod. Rep. 264, 265. Cr. El. 396, 397, 539. 10 Co. 127. Poph. 98. O. Benl. 8. pl. 31. Goldsb. 142. Moor 395, 396. Co. Lit. 225. a.

(b) 1 Jones 171, 172, 179, 139, 180, 181. Palm. 514, 515, 549, 552, 553, 554, 555, 556, 557, 558. Dyer 231. pl. 4. Co. Lit. 206. a. b. Cr. El. 864. Yelv. 138, 139. 1 Brownlow 104, 105. 1 Rol. 419, 420.

(c) Co. Lit. 29. a. 1 Co. 98. a. 4 Co. 11. a. 6 Co. 21. b. 68. a. 8 Co. 172. b. 9 Co. 73. a. 10 Co. 139. b. Hard. 387.

(d) 31 H. 6. Fitz. bar 60.

(e) 15 H. 7. 13. a.

(f) Dyer 262. pl. 30. Co. Lit. 206. a. Cr. El. 398. Moor 432. Palm. 549.

(g) Apres 112. a. 1 Rol. 450. Plow. 289. a. Br. condition 47. Bridgm. 40.

Trin. xxxviii Eliz.

Rot. 1734. In Communi Banco.

Halling's Case.

Owen 157. Cr.El. 517. Poph. 199. Allein 25. Godb. 445. 1 Anderſ. 300. 2 Rol. Rep. 466. Cart. 205. Kelw. 53. a. Moor 22, 454,457,458. Co. Ent. 132. pl. 15.

INter Halling & Convard en Det ſur obligac̄ p̄ performer covenants, fuit adjudge, q̄ ou le covenant fuit, Que il ferra eſtate en fee devāt tiel feaſt, al coſts del covenantee, q̄ le covenantor doit fair primer act, s. notifie al covenantee q̄l mãner deſtate il voile aver, iſſint q̄ le covenātee poit ſcaver q̄l ſum de mony a tender. Et fuit dit, tout fuit un, q̄nt le covenant fuit general, & q̄nt c̄ fuit particular: Come a fair feoffmt, le covenantor doit fair le prim act, mes q̄l manner de feoffmt il voit fair, ou p fait poll, ou p indenture, &c. iſſint en le principal caſe, ſi riens ſoit fait devant le jour, le covenant eſt infreint, p̄ c̄ q̄ le covenantor duiſt aver fait le primer act, & iſſint le default en luy.

Hill. xxxix Eliz.

In Communi Banco.

Mathewſon's Caſe.

Cr.El.408,470,471 2 Rol. 30, 149.

INt Mathewſon & auts Pl's, & Lydiate Def. le caſe fuit tiel; Un Chre-pty indent ent le Maſter & le owner dun niefe dun pt, & George Lydiate, & 6 aut merchāts dauť pt: Per q̄ le maſt & owns covenant ove les merchants deſkipper certain merchan-

marchandizes a tiel port de p de la mere, & a transporter eux al City de Londres, p q̄l, chescū del marchants covenant seperatim ove le master & owner, q̄ lun marchant payera 3 l. un auť 3 l. &c. & si de cæteris. Et les pols del covenant sont, conveniunt sepatim, &c. & en le fine est tiel clause; Et ad (a) pformatione oīum & singulorū cōvētionū ex pte pd' Mercatorū perimplend', quilibet mercator pd' seperatim obligat seipsum pfat' mro & proprietariis en double le fraight. Et ore sur un des seṽal covenants, action de Det fuit port ṽs Lydiate un des marchants sur le dit Indenture. A q̄ le Def. (b) plede, q̄ le seal dun auť des marchants affix al dit Indenture fuit debruse del fait; sur q̄ le Pl' demurre. Et en cē case fuit resolve, 1. Que comt q̄ les marchants joint in covenant, s. conveniunt (c) sepatim, uncore cest pol (sepatim) fait c̄ several covenants, & nemy un joint covenant: Auxy le dit darrein clause, ad pformationem oīum & singulorū, &c. est en ley seṽal, pur reason de cest pol (sepatim) & cest pol serť referre al several covenants devant. 2. Fuit resolve, q̄ comt q̄ les covenāts del part del masters & owners fueront joint, uncore les covenants del part des marchants estoyant seṽal; & a cest cause si (d) lenseal de lun des marchants soit debruse del fait, ceo ne avoidra le fait, mes solemt ṽs luy: Mes si ascun des (e) seals del master ou owners ust ēe debruse del fait, touts lour covenants ussont ēe defeat. Et si le fait ust ēe rase en le date aps le delivy, c̄ va a tout: Mes qnt les covenants sont seṽal, ils sont come seṽal faits escry en un (f) pē parchmt. Et Judgmt fuit done accordant. Vide (g) 3 H. 7. 14 H.8.25. 30 E.3.31, 32. in Ass. 47 E.3.3. in Det per Finchden, 39 H.8.36.

(a) 2 Rol. 149.
(b) Cr. El. 408.
(c) 2 Rol. 149. Cr. El. 546.
(d) 11 Co. 28. b. 1 Rol. Rep. 40. Cr. El. 576. 2 Rol. 30. Doct. placit. 260, 262, 263.
(e) 2 Rol. 30. Doct. placit. 260, 262, 263. Cr. El. 546. Poph. 161.
(f) Cr. El. 546.
(g) 11 Co. 28. b. Cr. El. 408. 3 H. 7. 5. a. 2 Rol. 30. Br. obligation 43. Fitz. bar 46.

Triā

Trin. xli Eliz. Reg.

Rot. 3252. In Communi Banco.

Lambe's Case.

Co.Ent.129.pl.13. Cr. El. 716, 864. Moor 645. Mod. Rep.265.

EN Det sur obligac̄ p Lamb executor de D. Ho Brownwent, ove condic̄; That if the Defendant shall in the Term of St. *Michael* next, in the Prerogative Court of the Archbishop of *Canterbury* give unto the said D. his Executors or Assigns, such sufficient Release and Discharge, *&c.* as by the Judge of the said Court shall be thought meet, That then, *&c.* Le Def. monstre, q̄ Doctor Lewyn fuit Judge del Court, & quod idem Judex nec devisavit, nec appunctuavit aliquā relaxatione, seu exoneratione, &c. secundū formam, &c. sur q̄ le Pl' demurre in ley. Et fuit adjudge p̄ le Pl': car entant q̄ le Judge fuit (a) estranger al condic̄, & le condic̄ est p̄ le benefit del obligor, & le performance de c̄ sans s̄ obligac̄, il ad imprise sur luy a performer c̄ al s̄ peril, & p̄ c̄ il duissoit non solemt aver fait le (b) primer act, mes auxy il duist procurer le Judge daver devise & direct c̄. Autermt est si lobligée mesme ou s̄ councel devisera. Vide (c) 33 H. 6. 16. b. adjudge accord, (d) 36 H.6.8.b. 32 E.3. Barre 264. 2 E.4.2. 8 E.4.2. 15 E.4.5.b. 22 E.4.43.b. 9 H.7.17. &c. Vide 7 (e) E. 4. 13.b. fuit dit, Si home soit oblige a fair a un home un sure, sufficient & loial estate en certain tre p advise de J. D. sil fait estate a luy accordant al devise de J. D. soit ceo sufficient ou non, loyal ou nient loial, uncore il est excuse del obligation.

(a) Mod.Rep.104, 265. 3 Bulstr. 30. 1 Rol. 452. 6 Co. 31.a. 1 Rol. Rep. 196. Co.Lit.209.a.
(b) 2 Jones 96. Cart.205. 1 Vent. 255. 1 Rol. 458.
(c) Br.covenant 3. Co. Lit. 209. a. 33 H.6.16.b. 17.a. Fitz. bar 62. Br. condition 13.2 Co. 3. b. 1 Rol. Rep. 196.3 Bulst.29,30.
(d) 2 Co. 3. b.
(e) Perk. sect.775. Fitz. det 81.

Mich.

Mich. xlii & xliii Eliz.

In Bank le Roy.

Broughton's Case.

EN Det in Cōmuni Banco p Broughton vs Pretty sur obligac ; le condic fuit, Que lou le Pl' fuit lie en un obligac de 200 l. p le Def. p paymt de 100 l. al A.B. If therefore the Defendant should save and keep harmless the Plaintiff for all Suits, Quarrels and Demands, touching and concerning the said Bond of 200 l. That then this Obligation to be void. Al jour de paymt de 100 l. le Pl' vient al lieu ou le 100 l. doit ee pay, & pceivant nul pson la psent a pryer le 100 l. p le Def. il de sav le penalty de s obligac paya le 100 l. a A. B. & ore port cest actiō sur s counterbond. Et sur Non fuit dampnificatus plede, le Pl' reply, & mre tout le dit especial matr ; Et sur c le Def. demurre. Et fuit adjudge, q le Pl' recova : car le paymt de 100 l. est (a) damage & harm, & st nad pay c, greinder harm ensueroit, & nest necessary q le Pl' fuit arrest ou sue, &c. Auxy fuit dit, q cest plea non (b) fuit dampnificatus, imply q le Def. ad gard luy sans harm, cōe p release, paymt ou autermt. Vide 18 E. 4. 27. b. p Brian & Litt. terror de suit, issint q il nosast aler ent ses besoignes, est dampnificac, coment q il ne soit arrest p force del proces.

(a) 1 Vent. 36, 261. 1 Jones 329, 330. 2 Bulst. 94. Cr. El. 53, 264, 369. 1 Rol. 432. Owen 19. Cr. Car. 349, 350. Cr. Jac. 288, 340. Dyer 187. pl. 4. Yelv. 207. 3 Bulst. 234.
(b) Doctrin. placit. 270.
(c) Cr. Jac. 340. 1 Rol. 432. 2 Bulst. 94, 105. 3 Bulst. 234. 18 E. 4. 27. b. 28. a. Br. condition 165.

Mich. xliii & xliv Eliz.

In Bank le Roy.

Dean & Chapter de Windsor's Case.

EN Bāk le Roy ent le Dean & Chapt de Windsor, & Hyde le case fuit tiel ; Hōe lessa un meason p Indētur p ans, le lessee p luy & ses executors covenant & grant ove le lessor, a repairer le meason a touts temps necessary : Le lessee assign c ouster al Hyde, q suffer c a decayer ; Le lessor port action

Cr. El. 457, 552, 553. 1 Rol. 521. Moor 399, 400.

(a) Moor 27, 399. Cr. El. 457, 552, 553. 1 Rol. 521, 522. 1 Sand. 239. Cr. Jac. 125. 1 Sid. 147. Cr. Car. 222, 523. 1 Jones 245. 1 Anders. 82. Devant 16.a.b.17.b.
(b) Apres 100. a. 1 Co. 99. a. 7 Co. 38.b. Co. Lit. 231.a. 2 Inst. 489. Carter 142. 3 Keb. 592.
(c) Devant 17. b. F.N.B. 181.n.
(d) Dyer 27. pl. 172, 173. &c.

tion de Covenant vers lassignée. Et fuit adjudge p Popham Chief Justice, & tout le Court, q laction de Covenant gist, coment q le lessee nad covenant p ses assigns: car (a) tiel covenant q extend al supportation al chose demise, est quodam modo appurtenant a c, & curgera ove c. Et en respect q le lessee, q ad luy imprise a porter les charges del repation, lannuel rent fuit le meinder, q trench al benefit del assignee, & (b) qui sentit commodum, sentire debet & onus. Si home grant a un (c) Estovers a repairer s mease, c est appurtenant a son mease, Fitz. Nat. Br 181. 28 H.8. (d) 28. Si le lessee covenant a discharger le lessor de oibus oneribus ordinariis & extraordinariis, & a repairer les measons, action gist vers lassignee.

Paschæ xliii Eliz.

In Bank le Roy.

Sir Thomas Palmer's Case.

Co. Ent. 36. pl. 29. Cr. El. 819, 820. 2 Rol. 699. Noy 32. Moor 691, 692

(a) Goldsb. 184. 1 Rol. Rep. 99. 2 Rol. 47.
(b) Winch 29. Cr. El. 820. 1 Rol. 725. 1 Jones 276. Cr. Jac. 481.

EN Action sur le Case int Basset & Maynard sur le genal issue, les Jurors done un special verdict a cest effect; Sir Thom Palmer fuit seisie en fee dun grand boys, & bargain & vend a un Cornford, & a ses assigns 600 cords de boys, dee prise p assignmt de Sir Thom; Cornford assign s interest al Pl', & puis le dit Sir Thom vende al Def. tiel quātity de boys, cōe voit fair 4000 cords, dee prise deins le dit grād boys, al electiō del vendee. Et puis Sir Thom assign al Pl' 600 cords de boys, dee prise p luy, q eux succide, & le Def. eux prist & convert, &c. Et Judgmt fuit done p le Pl'. Et en cē case 2 points fueront resolve. ¶ 1. Que Cornford ad interest, q il poit (a) assigner ouster, & nemy chose en action ou possibility: Car fuit resolve, si Sir Thom ne assign eux al Cornford, sur request, Cornford poit eux prender sans (b) assignmt, car le grantor ne poit p son act ou default demesne, ou subverter,

ter, ou derogate de s͂ grant; donqs ensuist, q͂ il ad inkest q͂ il poit assigner ouster. Vide 43 E.3.42.b. ou le (a) Prior de Leton seisie dun boys appell' Hosley, p fait p assent de s͂ Covent, vende le dit boys a un Barth. Wilby dee abate & carry deins 2 ans pchein ensuants (forspris 40 des melieur keynes, dee prise al election del Prior: Le vendee p brevity de temps sur fine de covenant, request le Prior de vener, & eslier ses keynes, & il ne voit my; p q͂ le vendee suffer 40 des melieur keynes a estoier, & les auts il abate: Et la issue fuit prise sur le req̃st; Quel case nest bien abridge p Brook tit. Reservation 3. car la il ad omit le req̃st. Mes Fitzh. tit. Barre 204. ad voiermt̃ c̃ abridge. Preignes gard bon Lecteur de touts (b) Abridgmts: car le principal use de eux est come de Tables, a trov le liure alarge; Mes chescun bon Student jeo exhort a lier & relier solemt̃ sur les liures alarge, cõe en aut lieu jeo ay advise. Et ove le dit resolution accord le liure in 8 E.3. f.5. & 54.b. ou le case fuit; J. ad mease & un carue de tre, & il ad reasonable estovers en le boys dun aut pview & livy del baily, &c. si il prist (c) estovers sans view ou livy, il est un trespassor, comt q͂ il prist meins q͂ il doit av p livy: Mes si J. demand ses estovers, & le owner de boys, ou son baily ne voile fair livy a luy, J. poit av Assise, vide 5 E.3.64.b. & 65.a. ¶ 2. Fuit resolve, q͂ admit lassignmt al Pl' dee void, unc aps q͂ les arbres sont succide, le Def. (d) ne puit eux pnder: Come si un grant mille cordes de boys a un destre prise al election del grantee, le grantor ou estranger succide ascun arbres, le grantee ne poit prender eux, mes doit supply son grant hors de (f) residue.

(a) Cr. El. 820. Hob. 174. 44 E.3. 43.b. Fitz. bar 204. Br. reservation 3. Br. relation 4.

(b) 10 Co. 41. a. 117.b. Præf. 4 Rep.

(c) 2 Inst. 411.

(d) 3 Keb. 493. Cr. El. 820. Palm. 212. 1 Brownlow 220. Yelv. 188.

(f) 1 Vent 271. 1 Bulst. 94.

Tris

Trin. ii Jac. Reg.

In Bank le Roy.

Le Countee de Rutland's Case.

Moor 723, 724, 725. Cr. Jac. 29.

ISabel Countess de Rutland port action de Trespass vers Roger Countee de Rutland, de sa mease & close debruse, appell' Eykering House, & Lady Park, al Eykering en le County de Nottingham. Le Def. plead non culp; Et ore en m cesty tm sur evidence a un substantial Jury al barre del Bank le Roy, le case sur levidence fuit tiel. Edward Countee de Rutland fuit seisie en fee del Manor de Eykering, dont le mease & close en qux, &c. fuer pcel, & p Indenture port date 10 Marcii, anno 21 Reg Eliz. p le augmtac del jointure del dit Countess, adonqs sa feme, covenant ove Sir Gilbert Gerrard Chlr, & Thomas Holcroft Arm s frere, q il devant le fine del Trinity-Term donq prochein ensuant, assuret p fine, ou aut conveyance, le dit Manor al dit Sir Gilbert & Thomas en fee; ql fine, ou aut conveyance del dit Manor de Eykering sert al oeps del dit Countee, & del dit Isabel sa feme, & del hrs del dit Countee; ql Indenture le dit Countee conust devant un Master del Chancery le 28 jour de m le moys, & m le jour fuit inroll, & le prochien jour, s. le 29 jour de March p aut Indenture ent le dit Countee del un parte, & le Seignior Burghley, Sir Gilbert Gerrard, & auts del aut part, pur le advancemt de ceux q succedet luy en le Earldom, & pur le advancemt des hrs males del corps del Thomas Countee de Rutland, son Apel, covenant ove le Seignior Burghley, Sir Gilbert Gerrard, & auters, a conveyer le dit Manor de Eykering enter auters al dit Seignior Burghley, Sir Gilbert Gerrard, & auters, ou a ascun, ou un des eux devant le Feast de Annunciac de nre Dame prochein ensuant; ql assurance sert al oeps del dit Countee Edward, & a les hrs males

Nota, *Sir* Gilbert *fuit party al ambideux les Indentures.*

males de son corps, & p̄ default de tiel issue, al oeps del hẽs males del dit corps del Thomas Countee de Rutland, ove diũs remainders ouster. Et puis le dit Edward Countee de Rutl' p le dit darrein Indētur̃ covenant & grant ove les pties a c̃, que si le dit Countee Edward ne conveier̃ sufficientment le dit manor, inẽ auẽs, come est avantdit, devant le dit feast del Annunciation de nostre Dame, q̃ donques le dit Countee Edward & ses heirs estoier̃ seisie del dit manor de E. al dits uses contain in le 2 Indentures; nul fine ou auter assurance fuit levy ou fait p le dit Countee Edward devant le fine del Trinity. Et puis, s. 17 Septemb. procheín ensuant, le dit Countee conust un note dun fine del manor de Eykering solement al Sir Gilb. Gerrard, & Thomas Holcroft, & al hẽs de Sir Gilbert, & le 18 jour de mesme le moys conust auter note dun fine del dit manor de Eykering, enter mults auters manors, mention en le darrein Indenture al Seignior Burghley, Sir Gilbert Gerrard, & auẽs, parties al darrein Indenture, & al heirs del Seignior Burghley; & ambideux fuer̃ enter in Octabis Michaelis donq̃s procheín ensuant. Et fuit prove per divers testmoignes, que le dit Countee Edward, cibñ devant les Indentures, come ap̃s le fine, dit a eux, que le dit Countess avera le manor de Eykering pur sa jointure. Et en cest case quater points fueront resolve per Sir John Popham Chief Justice, & tout le Court. ¶ Primerm̃t, Com̃t q̃ les Indentures esteant fait pur declaring des uses de subsequent fine, recov̄y, ou auẽ assurance a certain persons, & deins un certain temps, & a certain uses, ne sont forsq̃ directory, & ne lyont lestate ou interest del terre, uncore si le fine, recovery, ou auter assurance soit pursue solonq̃ les Indentures, ne poient estre ascun nude (a) averrem̃t encounter les Indentures, estre prise en tiel case, que puis le fesans de les Indentures, & devant lassurance p mutual agreement des pties, fuit conclude & agree q̃ lassurance serra al auters uses: Mes si auẽ agreem̃t ou limitation des uses soit fait p escript, ou p auẽ mattẽ auxy hault, ou pluis hault, donques le darrein agreem̃t estoiera; car chescũ contract ou agreement covient ẽe dissolve p mattẽ de auxy hault nature, come le prim̃ fait. (b) Nihil tam conveniens est naturali æquitati unumquodque dissolvi eo ligamine, quo ligatum est. Auxy serra inconvenient q̃ matters en escripẽ fait p advise & sur consideraẽ, & q̃ur finalm̃t impor̃ le certain verity del agreem̃t des pties, serẽ controlle p averrem̃t des pties, dẽe prove p le incertain testi-

(a) 2 Co. 76. a. 9 Co. 10. b. 3 Bulst. 251, 257. Palm. 507. Cr. Jac. 29. 2 Anders. 46, 47. 2 Rol. Rep. 39. Winch 119.

(b) Bract. lib. 2. f. 28. 1 Brownl. 191 2 Co. 53. a. 4 Co. 57. b. 6 Co. 43. b. 2 Inst. 359, 573. Davis 33. b.

testimony de slippery memory, & serra perillous al purchasors, farmors, & touts auts en tiel cases, si tiels nude averrmts encounter matt en escript, sert admit. ¶ 2. Fuit resolve, q̃ si le form des Indentures ne sont psue, cõe p̃ le quantity del tre, ou le tẽps deins q̃, &c. en ceux cases & auts semblables, ou les Indentures ne soient psue, Averremt sans escript poit estre

Cr. Jac. 29. Apres 68.b. 1 Co. 176.a. 2 Co. 76.a. 7 Co. 39.a.b. 2 Anderson 46,47.

prise, q̃ le fine, recovy, ou aut assurance fuit al aut use ou intent, q̃ est contain en le Indenture: car entant q̃ les Indentures ne sont psue, reason voit q̃ les pties serront admit a mre cause & reason, q̃ ils ne fueront pursue p encheson de novel agreemt subsequent; q̃l en tiel case poit ẽe cibn p pol, cõe p escripture. ¶ 3. Fuit resolve, q̃ comt q̃ les Indentures ne

Cr. Jac. 512.

sont pursuant en circumstance de temps, quantity, pson, & semblables, uncore si nul aut novel mean agreemt poit ẽe pve, lassurance serra en judgmt de ley al use contain deins les Indentures. ¶ 4. Que en le principal case, les fines ne poient ẽe direct p ambideux les Indentures, s. p le prim Indenture al oeps del Countee Edward, & Isabel sa feme p̃ lour vies, & p le second Indentur al Countee & les hrs males de s̃ corps, ove les remainders ouster, limit p le 2 Indenture; & issint les fines a onerer sur ambideux Indentures, (comt q̃ padventure issint fuit lententiõ des pties) & c̃ p̃ 3 causes: 1. Les directi-

Bridgm. 113.

ons & declarations des prim Indentures fuer controlle & frustrate p les second Indentures, & p̃ c̃ les fines ne poient estre direct p ambideux. 2. Les Indentures import seval distinct & divs contracts & estates; cestascavoir, lun al Countee & Isabel sa feme, & al hrs del Countee; laut al Countee solemt, & a ses hrs males de s̃ corps, ove divs remainders ouster: issint q̃ les fines doient p̃ le Manor de Eykering ẽe direct, ou entirement p le primer, ou entiremt p le second, sans ascun fraction ou division des estates. 3. Serra encounter le lre & intentiõ des ambideux Indentures, a fair hochpot & cõmixtion de ambideux, q̃ p lour creation fuer seval & distinct en temps, en persons & estates.

Cases

Cases de Executors.

Hill. xxvi Eliz. Reginæ, In Bank le Roy.

Russel's Case.

EDward Russel come executor de William Russel, port Actiõ sur le Case vers Thomas Prat, & Margery sa feme; Et count q̃ William Russel fuit possess dun Chest ove divers Jewels, biens, & sums dargent, (& declare quex en certain) deins c̃, & q̃ le dit William eux perde, & q̃ ils devenont al mains de Margery dum sola fuit, cestascavoir, 6 Januarii anno 1 Eliz. Et puis le testator morust, & quod predicta Margareta dum sola fuit, convert les biens a sa oeps, &c. Les Def. pledont en barre le release del Pl' a eux fait, &c. A q̃ le Pl' dit, q̃ al temps de release fait, il fuit deins age de 21 ans, &c. sur q̃ le Def. demurr en ley. Et le grand question (q̃ fuit sovent foits argue al barre & al bench) fuit, le q̃l le release del enfant executor, ayant prove le testament, barrera luy ou nemy. Et fuit argue, que le dit release serra barre p̃ divers causes. ¶ 1. Pur ceo q̃ lexecutor represent lestate del testator, & tout c̃ que il fait, est en le droit (& come en le person) del testator, & nemy en son droit demesne: Et p̃ ceo, son infancy nest destre respect. ¶ 2. Le ley q̃ enable luy dassumer sur luy le charge del testament, & a prover c̃, & a porter actions, & a fair touts choses quex appent al office dun executor: Mesme le ley enable luy a fair releases & acquitances sans ascũ regard a s̃ nonage; Come le (a) Roy navoidera leases ou grants, en respect del infancy de s̃ natural capacity; Ne Maior, Bailiff, ou le test del ascun auter

1 Anders. 177, 178. 1 Leon. 193. Moor 146. Poph. 190, 191. 1 Jones 174.

(a) 1 Rol. 728. a. 26 Ass. 54. Co. Lit. 43. a. Fitz. enfant 15. Br. age 34. 7 Co. 12. a. Calvins Case, Plow. 213. a. 221. a. 364. b.

auter Corporation navoidera ascun de lour faits ou grants p lenfancy de lour natural capacity, p c q ils sont eux en auf droit & capacity. ¶ 3. Serra inconvenient q infant executor compellera les dettors de s testator a paier les dets a luy, & q il navera power a eux acquitter ou discharger. ¶ 4. Ils citot divers liures en le point 16 H. 6. (a) tit. Release 45. lopinion de tout le Court, q un release fait p (b) infant deins age, come executor, est bon, & il ne luy puit voider. Et m le ley est de release fait p feme covert executrix; & sic le release le baron ne vault, come la est dit, 18 H. 6. 4. dun feme covert, & 18 E. 4. 10. dun feme covert, 21 E 4 13 & 24. dun infant, & feme covert, & 16 H. 7. 6. Mes sur grand deliberac, & sur conference ew ove Anderson Chief Justice del Cōmon Bank, Manwood, & auters Justices; fuit resolve p Sir Christopher Wray Chief Justice, Sir Thomas Gawdy, & tout le Court del Bank le Roy, que le (b) release ne fuit barre, & principalmt p 3 causes. ¶ 1. Pur c que si c sert barre, c serra un devastavit, & chargera lenfant de ses biens proper. ¶ 2. Ceo sert tort, q un enfant per son release ne unqs poit fair. ¶ 3. En feasans de cest release, il ne pursue son office, ne pform le duty dun executor; Et pur c fuit bien agrée, q touts choses, q il fait (c) solonqz loffice & duty dun executor, c liera luy: Mes lacts q il fait encounter loffice del executor, ne luy liera, entant q il est deins age; Le office dun executor (cōe appiert in 20 H. 7. 5. a.) est a fair son office (d) veramt, diligentmt, & loyalmt, & touts ceux il infreint, quant il degast les biens de mort. Mes fuit resolve, q sur paymt ou satisfaction al enfant executor, il poit acquitter & discharge le dettor p tant q il receive. Mes fuit resolve, q un moigne executor poit release sans satisfaction, car son pfession ne sert impedimt al release, 21 E. 4. 13. b. Et quant al dit liure de (e) 16 H. 6. en le dit case del enfant, fuit dée entend, quant lenfant receive plein satisfaction: Car le liure dit, fait denfant deins age come executor, & il ne fait come executor, quant il release & receive riens: Mes lopinion la, quant al feme (f) covert executrix, fuit oustermt deny, car comt q el soit executrix, uncore el poit riens fair al prejudice de sa baron: Mes sans question, le release de le baron en tiel case est bon. Et issint les doubts en les liures de 13 E. 1. tit. Executors 119. 5 E. 3. 45. Barbors Case. 18 H. 6. 4. & 18 E. 4. 10. 21 E. 4. 13 & 24. 2 H. 7. 15. 6 H. 7. 6. 7 H. 7. 13 & 14. sont bien explain. Et puis sur bre denquiry de damages retorn puis lestatute de 27 (g) Eliz cap. 8. Judgmt fuit done p le Pl.

Et

(a) Cr. Car. 490.
(b) Moor 146.

(b) Moor 146. Cr. El. 43, 671. 1 Anders. 177. pl. 138, 164. Swinb. 288. Co. Lit. 172. a. 4 Leon. 102. Cr. 1 Jones 400. 1 Rol. 730. Cr. Car. 490, 491. 1 Rol. Rep. 366. 1 Brownl. 120 Cr. El. 43, 671. Godb. 29.

(c) Cr. El. 254. Cr. Jac. 441. Co. Lit. 172. a. 1 Ander. 117, 177, 178. 1 Rol. Rep. 366. 1 Brownlow 120.

(d) 8 Co. 133. a. 20 H. 7. 5. a.

(e) 16 H. 6. release 45. Cr. Car. 490.

(f) 1 Anders. 117 Kelw. 122. a. b. Cr. Car. 519. 1 Sid. 188.

(g) 1 Leon. 193, 194. Moor 146.

Et sur le dit act bře Derror fuit port en Leschequer Chamber, ou fuit unemt agree, q̄ le dit release ne fuit barre. Et issint cest point fuit resolve ꝑ touts les Justices Denglitre. Mes divers auters errors fueront assign & move cibien en le count, come q̄ le plea fuit discontinue. Et puis les ꝑties agreont, & p̄ error en le ꝓceeding, le Judgmt fuit reverse. Et nota (bon Lecteur) ꝑ ceux resolutions vous mieux entendre les dits liures devant cite, & alios ejusdē farinæ. Et Sir Thomas Gawdy dit en cest case, q̄ executor poit bien (a) release ascun action devant ꝓbat; car comt q̄ il ne poit aver (b) actiō uncore linterest (c) del action est en luy, (d) 21 E.4.24.a. accord.

(a) Plowd. 278. b. 281.a. infra in Middletons Case. 9 Co. 39. a. Raym. 481. 1 Rol. 917. A. 1 Co. Lit. 292. b. Hutt. 31. 10 Co. 52.a.
(b) Plowd. 278.b. 280.b. 281.a. 7 H.4. 18. infra in Middletons Case, Fitz. executors 107. Br. executors 49. 9 Co. 39. a. Raym. 481. 1 Rol. 917. A. 2 Co. Lit. 292. b. Hutt. 31. 10 Co. 52.a. Went. 51. Perk. §. 482. (c) Dyer 135. pl. 13. (d) Br. Executors 117. infra in Middletons Case.

Pasch. 1 Jac. Reg.

In Communi Banco.

Middleton's Case.

Fuit adjudge in Com. Banco inter Middleton & Rimot; Que executor devant ꝓbate poit (a) release actiō, comt q̄ devant ꝓbate, il ne poit aver (b) action: car le (c) droit del actiō est en luy. Mes si A. release, & puis prist (d) administration, ceo ne barrer luy, car le droit del actiō ne fuit en luy al temps del release. Vide (e) 18 H.6.43.b. Greisbrooks Case, Plow. Com. 277, 278. (f) 21 E.4.24.a. Deux executors ꝓve le testamt, le 3 refuse, unc̄ il poit release. (g) Lit. 177. si un soit oblige a paier sum al jour a vener, release de actiōs devāt le jour, barre ceo; uncore devāt le jour il ne poit aver actiō de Det. Et issint lopiniō de Sir Th. Gawdy en le case devāt fuit ore adjudge.

(a) Plowd. 278.b. 281. a. supra in Russels Case. 9 Co. 39.a. Raym. 481. 1 Rol. 917.a. 1. Co. Lit. 292. b. Hutt. 31. 10 Co. 52.a.
(b) Plowd. 278.b. 280.b 281.a. 7 H. 4. 18. a. supra in Russels Case. Fitz. executors 107 Br. executors 49. 9 Co. 39.a. 10 Co. 52.a. Raym. 481. 1 Rol. 917. a. 2. Co. Lit. 292.b. Went. 51. Perk. §. 482. (c) Dyer 135. pl. 13. (d) Moor 119, 126. Swinb. 281. (e) 18 H.6. 23.b.
(f) Br. executors 117. supra in Russels Case. (g) Lit. §. 512. f. 118.b. Co. Lit. 292.a.b.

Hill. lx Eliz. Reg.

Rot. 119. In Communi Banco.

Harrisons's Case.

Co.Ent.146.pl.25. Jenk. Cent. 274. Bridgm. 80.

(a) 1 Rol. 925. Bridgm. 80, 122. 2 Leon.212.1 Rol. Rep. 405. Moor 752. Jenk. Cent. 274. Cr.Jac. 9,35, 102, 182. 1 Bulst. 101. Cr. Car.363. Cr. El. 467. Stiles 55. 9 Co. 108. b. Swinb.370. Owen 72.

(b)4 Co.59.b.60.a. Cr. El. 575, 734, 735,822.2 Ander. 160.1Brownl.101. 1 Rol.926. Yelv. 29,133.6 Co.45.b. Swinb. 369,370.

ROBert Green port Action de Det sur obligac de 40 l. vers William Harrison, administrator des biens & chateux de Thomas Sidney; Le Def. plead q̃ lentestate fuit lie en un obligac en natur dun stat staple, ouster q̃ il nad biens, &c. Le Pl' reply, q̃ fuer Indentures de defeasans faits p performer covenants en certain Indentures, qur touts fueront pform hucusq; : sur q̃ le Def. demurre. Et fuit adjudge q̃ le Pl' recovera, car det due p obligation serra pay devant un statute fait pur performer de covenants quant nul de eux adonqs fueront, ne padventure unques sert infreint, mes sont choses in contingency, & in futuro; & p t tiel possibility q̃ padventure ne unqs happera, ne barrera psent & due dets p obligac, ou auts specialties. Et si tiels statutes p pformer de covenants, barret auts de lour due dets, petit ou nul dets serra payes. Et nota bene, q̃ fuit adjudge en Bank le Roy p Popham Chief Justice, & tout le Court, Hill 42 Eliz. q̃ si hoe recover dets p Judgmt en le Court le Roy, cest judgmt serra pay devant bonds en nature dun (b) Statute Staple, ou Statutes Staple ou Merchant; Car Judgmt done en le Court le Roy est pluis hault q̃ tiels statutes, q̃ sont private records, & portable p le conusee en son pocket. Mes Judgmt done en le Court le Roy sur ordinary & judicial proceeding, queux remain en le custody dofficer jure, sont Records q̃ sont preferre en ley devãt tiels statutes: Et le ley psume, judicium reddit in invitum. Et tiel judgmt serra pay devant recognizans conus p assent des pties en ascun des Courts le Roy, q̃ poit ẽe conus en private manner. Et non refert, le q̃l le Judgmt, ou recognizans, ou lestatute, soit primer, mes sit juditium prius

vel

vel posterius, ē doit ēe primermt satisfie. Et issint fuit tenus p totam Curiam in Cōmuni Banco, inter (a) Pemberton & Barram Paschæ 32 Eliz. Rot. 235. Queux vide devant en le fine del Sadlers Case en le quart part de mes Reports.

(a) Swinb. 369, 370. 4 Co. 59. b.

Hill. xl Eliz. Reg.

In Communi Banco.

Piggot's Case.

Piggot administrator de Longfield durante minore ætate de A. Longfield, port action de Det en le Common Bank, sur obligation vs Gascoigne & Furthee; Et (a) avre q̄ A. Longfield fuit deins age de 21 ans; A q̄ les Def. pleď un insufficient barre: Sur q̄ le Pl' demurre. Et entant q̄ le barre fuit insufficient, ore le q̄stion fuit, si le count fuit bon ou nemy. Et le doubt fuit, q̄nt Administrač est grant durāte minore ætate, quam longmt ē indurera, s. al age de 21 ans, ou a q̄l age ē indurera? Et sur ē le Court cōferre ove diśse Doctors del Civil Ley overtmt en Court. Et fuit tenus p eux q̄ administrač durante minore ætate cessera al age de (b) 17 ans; Et si tiel administrač soit cōmise, lexecutor esteant del age de 17 ans, ē est void. Et a cest cause, fuit agard p le court, q̄ le count fuit insufficient: Car padventure lexecutor fuit del age de 17, 18, &c. & deins lage de 21 ans, cōe le Pl' ad avre, & uncore ladministrač del Pl' fuit determine: Pur q̄ fuit agard que le Pl' prendra reins per son bill.

Cr. El. 602.

(a) 1 Rol. Rep. 400, 401. Vaugh. 93. Cr. Jac. 590. Cr. Car. 240. Hob. 251. Yelv. 128. Doctrin. placit. 86. 2 Sid. 60. (b) Apres 29. b. Cr. El. 602. 1 Brownl. 46, 101. 2 Brownl. 247, 248. 6 Co. 67. b Cr. Car. 516. 1 Rol. 526, 910. Moor 462. Vaugh. 93. Cr. Jac. 590. Yelv. 130. 2 Sand. 213. 2 Jones 48. Mod. Rep. 299. Swinb. 43, 286, 287 Hob. 251. 2 Rol. Rep. 209. Doctrin. placit. 86.

Mich.

Mich. xli & xlii Eliz.

In Communi Banco.

Prince's Case.

2 Anderson 132. Cr. El. 718, 719. 3 Leon. 278.

IN Trespass quare clausum fregit, int' John Prince Pl', & Will' Sympson Def. Le case fuit tiel; Un Jackson esteant possess dun t'm p ans, ad issue James & Jane, & fist s' volunt, & fist Jane sa file (adonqs de 12 ans) s' Executrix, & adonqs devise le dit t'm al James, adonqs auxi deins age, & morust, Administratio durante minore ætate de Jane fuit comit a lour mere, q' prist baron; James morust, le baron prist administrac' de ses biens, & venda le dit t'm; Jane prist baron: Et le question fuit, si le dit vendic' fuit bon ou nemy. Et en cest case trois points fueront resolve p les Justices del Comon Bank. ¶ 1. Que tiel administrator (durante minore ætate) ne poit (a) vender ascun des biens del mort, si ne soit de necessity, p (b) paymt des dets, ou (c) bona pitura, car il ad s' office dadministrac' pro bono, & commodo del infant, & nemy p s' prejudice. Auxy il ne poit (d) assenter a ascun legacy, sinon q' soit assets a payer dets, &c. & generalmt ne poit fair ascun chose al (e) prejudice del infant: Car les pols des lres de administrac' sont; Administratione oium & singuloru bonoru ad (f) opus, comodu, & utilitate executricis durante sua minore ætate, & non aliter, nec alio modo comittimus, &c. ¶ 2. Tiel administrac' cesse al age del (g) 17 del enfant; Come fuit adjudge inter Pigot & Gascoigne Hill' 40 Comuni Banco. Et la fuit auxy tenus, que enfant executor devant 17 ne poit assent' a un legacy, &c. Et quant Jane deins 17 prist baron, si ust appear q' le baron ad estre de pleine age, donqs ladministrac' cessect; car el ad prise baron, q' puit administer coe executor: Mes c' nappiert en le case, ou le baron fuit de pleine age, ou deins age. Et en ce case fuit dit, q' Judgmt fuit done en bank le Roy Paschæ 22 Eliz.

(a) 1 Anders. 132. Cr. Jac. 718, 719. 6 Co. 67. b. Swinb. 288.
(b) Raym. 484. Swinb. 288.
(c) 1 Ander. 132. Cr. Jac. 718, 719. Swinb. 288.
(d) March 138. Cr. El. 719. Swinb. 288
(e) 8 Co. 135. b.
(f) 6 Co. 67. b.
(g) Devant 29. a. 1 Brownl. 46, 101. 2 Brownl. 247, 248. Cr El. 602. 6 Co. 67. b. 1 Rol. 526, 910. Moor 462. Vaugh. 93. Cr. Jac. 590. Yelv. 128, 130 2 Jones 48. Mod. Rep. 299. Swinb. 43, 286, 287. Hob. 251. 1 Rol. Rep. 400, 401. 2 Rol. Rep. 209. Cr. Car. 240, 516. 2 Sand. 213. Doct. placit. 86.

Eliz. inter Vere & (a) Jefferies, q̃ ou un ad biens solemt en un inferior Dioces, unc̃ le Metropolitan de m̃ le province, pretendant q̃ il avoit bona notabilia en divers Dioces, cõmit ladministrac̃; cest administrac̃ nest void, mes voidable p sentence, p̃ c̃ q̃ le (a) Metropolitan ad jurisdiction sur touts les Dioces deins s̃ province, & p̃ c̃ ne poit ẽe void mes voidable p sentẽce. Mes si un (b) Ordinary dun Dioces cõmit administration des biens, qñt le pty ad bona notabilia en divers Dioces, tiel administrac̃ est meremt void, cibien qñt al biens deins s̃ Dioces demesne, come aliors, p̃ c̃ q̃ p nul mean il poit aver jurisdiction del cause. Et voier est que tiel Judgmt fuit done.

Veres Case, *Paschæ 22 Eliz. in Bank le Roy.*
(a) 8 Co. 135. a. 2 Jones 78. Davis 44.a.47.a. 3 Bulst. 176. 4 Leon. 212. 1 Rol.Rep.423.Cr. El.457.Moor 145, 693. Swinb. 357. 2 Leon.155. Hob. 185. Plowd.281.a.
(b) Plow. 281. a. 2 Leon.155.Cr.El. 457.

Mich. xl & xli Eliz. Reg.

In Bank le Roy.

Coulter's Case.

Robert Coulter port Action de Det sur obligac̃ de 40 l. vsus Will Ireland, Executorem testamti & ultim voluntatis Richard Hunt; Le Def. plead pleinmt administer, & issint riens enter mains: Sur q̃ ils fuerõt al issue, & le Jury done un special vdict, q̃ le dit Richard Hunt fuit lie al Def. & s̃ fits en un obligation del nature dun statut staple de 500 l. & q̃ le Def. fuit executor de s̃ tort; & avoit 1 40 de biens de mort en ses mains, & m̃ les biens retain en ses mains a satisfier luy m̃ p̃ part del dit det de 500 l. Et si le dit retainer p un executor de s̃ tort, fuit loyal, ou nemy, fuit le question. Et fuit object, q̃ le Def. en tiel case poit retainer p̃ divers causes. ¶ 1. Le Pl' ad p son count affirm luy fore executorem

Moor 527. Cr. El. 630, 631. 1 Rol. 922

(a) Raymond 47. 2 Co. 4. b. 2 Rol. 691. Dyer 32. pl. 8. 9 Co. 69. b.
(b) 28 Ass. pl. 34. Br. confession 27. Fitz. assise 272.
(c) Br. confession 38. Br. verdict 3. Br. non est factum 4.

cutorem testamti & ultimæ voluntatis Rich. Hunt, & le Jury ne poit trove encounter c q ambideux les pties ont (a) agrée en pleading: come est agrée in 28 Ass. pl. (b) 38. in Assise, (c) 9 H. 6. 37. a. b. in Det, 1 Eliz. Dyer 167. 9 H. 7. 3. a. b. in Rescous, &c. & p c le trover q il est executor de s tort, est abundance & surplusage. ¶ 2. Que comt q lexecutor de s tort ne poit retainer vs un droiturel executor, ou vs administrator, uncore il poit retainer vs le Pl', q est un creditor, cõe le Def. est: & eo potius, q il ad affirm luy executor en son count, come est avantdit, & ideo, vers luy il avera touts les priviledges dun executor, & issint respective il avera vs lun, & nemy vers lauť. ¶ 3. En plusors cases, un q est eins de s tort recoupera & retainera, &c. 3 H. 6. tit. Damages 18. Cestuy q ad rent de 10 l. issuant hors de certain tre, disseise le tenant del tre, en Ass. port p le disseisee, le disseisor (d) recoupera le rent en les damages; issint q ou le mean profits del tre en tiel case fuer al value de 13 l. le disseisee recovera forsq 3 l. 43 E. 3. tit. Damages 37. le disseisor recoupera tout en damages, q il ad expend en amendmt des measons, 14 E. 3. Damages 92. 24 E. 3. f. 50. & 14 Ass. pl. 124. accord', 8 Ass. pl. 37. Rent service incurge durant le disseisin sert recoupe, 9 E. 3. 8. 4 H. 7. 11. 14. b. acc, & in 40 Ass. pl. 56. la feme retainet le 3 part des psits vers le Roy in respect de sa droit de dower, q el ad a mesme les terres. Issint cestuy q est (d) gardein en socage de s tort, avera reasonable allowances. Mes fuit resolve per totam Curiam, que un executor de son tort, ne (f) retainera, car de c insuer grand inconvenience & confusion, car chescun creditor (& principalmt qnt les biens le mort ne sont sufficient a satisfier touts les creditors) voilloit contend a fair luy mesme executor de son tort, al intent a satisfier luy mesme p retainer, p q auters serra barre; & nest reasonable que un prendra advantage de son tort demesne. Et si le ley donera a luy tiel power, le ley serra cause & encheson de tort, & de tortious prisel des biens le mort. Et le ley de Dieu dit, Non facias malum ut inde fiat bonum, & melius est omnia mala pati, quam malo consentire. Et est clere q touts loyal acts, (g) q executor de son tort demesne, ou un (h) disseisor, ou abator, &c. fait, est bon; Et pur ceo, si disseisor ou abator endowa un feme, q ad title de dower, ceo est bon, & liera le disseisee. Mes si feme q ad title de (i) dower disseisie le tenant del terre, el ne poit endowa luy mesme per retainer. Auxy si feme q ad title de dower occupy le tre, come gardein en socage p sa droit demesne, & nemy come droiturel gardein, el

(d) Cr. El. 631. Dyer 2. pl. 7.
(e) Cr. El. 631.
(f) 1 Rol. 922. Cr. El. 631. Moor 527. 1 Brownl. 103, 104 Mod. Rep. 208. 1 Sid. 76. Yelv. 137, 138. Clayton Rep. 116. pl. 203. Swinb. 371, 381. 2 Vent. 180. Godb. 217. Stil. 337, 338. Chan. Rep. 33.
(g) Plowd. 282. b.
(h) Dyer 2. pl. 7.
(i) Co. Lit. 35. a. 357. b. 2 Co. 67. a. 12 Ass. 20. Br. dower 59. Br. assise 181. Br. damage 96. 6 Co. 58. a.

el ne endowera luy m̃ de la pluis beale, car c̄ est en un judgm̃t done en Court le Roy. Auxy si feme q̃ ad droiturel title de dower, soit pty, ou privy, ou consenting a un tort, le (a) assignment de dowr̄ a luy est void: cõe si el pcure un a disseiser le tenant del t̃re, al entent dẽe endowa p luy. Et le nosmer le Def. executor̄ testam̃ti ultim̃ voluntatis, ne pve luy droiturel executor; car issint chescũ executor de s̃ tort est nosme, & nest auter (b) form de br̄ ou count. Et qñt al case de recouper en damages, en case de rent service, charge ou seck, fuit resolve q̃ le reason del recoup en tiel case est, p̃ c̄ q̃ autermt, qñt le disseisee reentra, les arrerages del rent service, charge ou seck, serra revive: & p̃ c̄ p̃ avoider circuity daction, (& (c) circuitus est evitandus; & (d) boni Judicis est lites dirimere, ne lis ex lite oriatur, les arrerages durãt le disseisin ser̃ recoupe en damages: Mes si le disseisor doit avẽ cõmon en le t̃re, le value del cõmõ ne ser̃ recoupe, car p le regresse del disseisee, il navẽa asc̄ arrerages ou recõpence p̃ eux: cõe appiert en (e) 27 H.6. 13. a. Et ove cest resolutiõ concernant recoup en case de cõmon, accord le liure en 33 H.6. (f) 32.a. in Riches Case. Et issint le doubt en 16 H.7. 11.a. est bien explain. Et appiert q̃ le case de recouper, estoit sur auter reason que le case al barre.

(a) 2 Co. 67. a. 3 Co. 78.a. 6 Co. 58. a. 8 Co. 132.b. 15 E. 4. 4. b. Br. dower 15, 59. Br. assise 181. Co.Lit. 35.a. 357.b. 1 Rol. 549. 2 Rol.Rep. 17. Plow. 51.a. 54.b. Poph. 64, 100. Br. damages 96.
(b) 1 Brownl. 102. Yelv. 137. Mod. Rep. 208.
(c) Co.Lit. 348.a.
(d) Apres 37. a. 4 Co. 15. b.
(e) Fitz. cõmon 6. Cart. 76, 77. Br. grant 2. Br. common 4. Br. pernor de profits 2.
(f) Br. trespass 30. Fitz. bar 63. Br, titles 2.

Mich. xli & xlii Eliz.

In Bank le Roy.

Hargrave's Case.

Body fist lease p̃ ans rendant rent, le lessee morust intestate, Hargrave prist l̃res dadministratiõ, & p̃ rent arere en s̃ tẽps puis le mort de lintestate, Body port actiõ de Det en le debet & detinet, &c. Et puis verdict, le councel del Def. move en arrest de judgm̃t, q̃ le br̄ duist estre port en le detinet tantum, p̃ c̄ q̃ le Defendant prist les profits en aut̃ droit,

Moor 566. Cr. El. 711, 712. 1 Rol. 603.

&

& ils serr̃ en ley assets: Et le liure en (a) 10 H.7.5.b. fuit fortm̃t urge, Car la est expssem̃t tenus, q̃ en le case al barre, le bř serr̃ en le detinet p̃ les arrerages incurre en le tẽps del executor del lessee. Uncore sur bon considerac̃ & conference ew ove auters Justices, fuit adjudge, q̃ le bř serr̃ en le debet * & detinet en le case al barre: car qñt lexecutor ou administrator prist les profits, rien serra (b) assets, mes les pfits, ouster le rent: Cõe si le tre vault 10 l. p annũ, & 5 l. est reserve, en cest case rien serr̃ assets forsq; le 5 l. ouster le rent,; & p̃ c̃ le bř serra p̃ le rent en le debet & detinet. Vide Dyer 7 E. (c) 6. 81. accord'. Mes nota q̃ en touts actiõs port p executors (cõe executors) le bř serra touts foits en le (d) detinet tantum, comñt q̃ le duty accrue en lour tẽps demesne, cõe (e) 18 H. 8. 3. Si lexecutors del lessor port actiõ de Det vs le lessee p̃ arrerages encurre en lour tẽps, le bř serra en le detinet tantum, 20 H.6.4.b. En det sur arrerages de account, dassignm̃t des auditors, p eux m̃, le bř serr̃ en le (f) detinet tantum, car en touts cases qñt executors sont arcts de nosmer luy m̃ executors, en ascun action port p eux, le bř serr̃ en le detinet tantum; p̃ c̃ q̃ le chose ou damages recov serra assets. Et fuit adjudge Pasch. 36 Eliz. en Leschequer, en le case de un (g) Hitchcock, q̃ p̃ ‖ escape hors dexecution en temps del executor, sur recovy ewe p (h) lexecutor m̃, il nav̄a action en le debet & detinet, mes en le (i) detinet tantum, vers le viscount, causa qua supra. Vide 11 H. 6. 7,8. 16. 36. Harlewins Case.

(a) Br.det 238. Cr. El.326,712.1 Bulst. 23. 2 Rol.Rep.132. 2 Brownlow 206. Palm. 117.
* Cr.El. 711, 712. Moor 566. 1 Rol. 603,927. Cr. Car. 225, 226. Cr. Jac. 238,411,545,546, 549,685. 1 Bulstr. 22,23. Palm. 116, 117. 2 Rol. Rep. 131,132,133. Noy 137. 1 Brownl. 56. 2 Brownl. 202,203 204,205, 206,207. Allein 34, 42, 43. Stiles 61, 80, 81. Hutt. 79. Poph. 121. Mod.Red. 185 1 Keble 189, 493. Lit.Rep. 342. 8 Co. 159.a. Apres 35.b. 2 Jones 169, 170. 1 Sid. 266,342,379 Hob. 282. 1 Vent. 271, 272.
(b) Moor 566. Cr. El. 712. Poph. 121.
(c) 1 Bulst. 22. Cr. El. 712. Dyer 81. pl. 67. Stiles 81.
(d) 2 Brownl. 203, 206. Moor 566. Cr. El. 840. F. N. B. 119.m. 1 Rol. 603. Noy 32. Cr. Jac. 545. 2 Jones 169, 190. 2 Rol. Rep. (h) F.N.B. 121.a.

225,238,545,546. Br. executors 15. (e) 2 Jones 170. (f) 2 Rol.Rep. 132. Cr. Jac. 170. 2 Brownl. 203. Cr.Car. 326. Br. det 9. Fitz. brief 84. 1 Rol. 602. (g) Poph. 132. Lane 80. Cr. El. 326, 327. Hob. 264. Hutt. 79. Cr. Jac. 546. ‖ Hob. 38. (i) Hob. 272. Jenk. Cent. 300.

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Hill. xlv Eliz. Reg.

In Banco Regis.

Pettifer's Case.

IN bře de Error enť Robinson, &c. & Pettifer: le case fuit tiel; En Det, Judgmt fuit done en le Cōmon Bank vs deux Executors, de recov le det de bonis testatoris: Sur q̃ Fieri facias fuit agard al Viscount, a levier le det de bonis testatoris, &c. sur q̃ le viscount retorn, nulla bona, &c. Et sur cest retorn, un entry fuit fait en le roll', p̃ c̃ q̃ testatum est q̃ les executors ont vend diverse biens del testator, & convert les deniers a lour oeps demesne, un brief fuit agard al viscount, denquirer p le serement de bon gents de son bailiwick, quex biens (q̃ fueř a le testator jour de s mort) fueront degast p les executors; p force de quel bř, le viscount priſt un inquisition; p que fuit trove, que divers biens del testator, al value del dit det recover, fueť degast per les executors: & cest fuit retorn en Court; Sur q̃ le Pl' pursue un Scire facias vers les Def. a mře cause p̃ que execution ne serra agard de lour biens propres. Et sur 2 Nihils, le Court agard executiō; Et sur c̃ les executors sue bř de Error in redditione executionis. Et comt q̃ fuit dit, q̃ le dit course fuit usual en le Common Bank, & pluis favorable q̃ lancient course fuit, car p c̃ le Devastavit ne serra retorn p le viscount solemt, mes ore serra inquire p enquest retorn, & sur ceo Scire facias covient estre agard. Mes fuit adjudge, q̃ le dit pceding fuit erronious, Car quant Judgmt est done vers lexecutors, & sur le Fieri facias le viscount retorn nulla bona, &c. le Pl' poit av special bř de Fiere facias, s. q̃ le viscount leviet le det des biens le mort, & si sibi constare poterit, q̃ les executors avoient degast les biens, donqs de bonis ppriis: Et c̃ est consonant al ley & rea-

Co.Ent. 268. pl 15. 1 Jones 417, 418. Lit.Rep. 47. 2 Sid. 102.

Cr. Car. 564. 2 Inst. 472. 1 Jones 417, 418.

Cr. Car. 520, 526, 527, 564, 603.

son; Al ley cõe appiert en 12 E. 3. Executors 73 & 85. & 9 H. 6. 9. b. & 57. b Al reasõ, p̃ c̃ q̃ en tiel case, si le viscount fait faux retourn, le pty poit av̄ r̄ remedy p Action sur le case, q̃ est bon mean a enforcer le viscount a fait voyer & just retorns en tiels cases. Mes p le dit novel course, si le viscount prist enquest, & retorn c̃, coment q̃ c̃ soit faux, unc̄ le pty nad remedy v̄s le viscont, ne v̄s ascun auſ. Et coment q̃ Scire facias en le case al barre fuit agard v̄s les executors, uncore sur 2 Nihils retourn, ils serr̄ condemn, & charge de lour ppr biens, & uncore paddventure navoient ascun notice de c̃, le actiõ ascũ foits esteant port en forein county, & ascun foits en le county ou il demurre, & uncore les executors nont notice de c̃, q̃ serra mischievous: Et p̃ ceux causes lexecutiõ fuit revse, mes le Judgmt estoit.

Kelw. 22. b. Noy 124. Owen 132, 133. Cr. El. 860.

Cr. Car 528. Dyer 168. pl. 17.

Cr. Car. 527. Cr. Car. 520. 1 Rol. 776.

Paschæ i Jac. Reg.

In Communi Banco.

Robinson's Case.

Cr. Jac. 15. Dyer 202. pl. 69.

Robinson & alii executors de J Robinson port actiõ de Det sur obligac̄ v̄s Robinson; Le Def. plede q̃ devant le pchase de cest bre, un des Pl's come Administrator de J. R. port actiõ de Det sur mesme le bond, en mesme cest Court v̄s le Def. q̃ adonq̃s plede, q̃ J. R. fist executors, que administer; Et travers que il devy intestate; Adon-

Adonques le Pl' reply, q̃ ladministration fuit commit a luy, pendente lite inſt lexecutors del dit volunt: Sur q̃ le Def. demurre. Et fuit adjudge vers le Pl'. Et cest plea fuit plead p voy destoppel, & demand judgmt sil ut executor avera action de Det, sur m̃ le bond vers le Def. Le Pl' reply, & monstre le repeal des Letters de Administrac̃, & q̃ les Pl' sont executors: Sur q̃ le Def. demurre, il pretendant, q̃ entant q̃ un des Pl's fuit barre en le prim̃ action, q̃ ils serra barre a touts jours: Et le cause fuit bien debate al barre & al bench. Et al darrein Judgmt fuit done p̃ le Pl': Car fuit unemt agrée, q̃ p le prim̃ Judgmt, le Pl' fuit barre qnt al actió de brief, s. daver ascun action come administrator: Mes comt q̃ il adonqs en verity fuit executor, uncore le misprisel de s̃ action, nest barr̃ ne estoppel a porter s̃ voyer action: Come si hr port Formedon en le discender, & soit barre en c̃, uncore il poit aver Formedon en le remainder, ou reverter. Vide 3 E.3.21. 4 E.3. Estoppel 133. 19 E.3. Estoppel 227. 18 E. 3. 31. 40 E. 3.21. 2 R. 2. Estoppel 210. 6 H. 4. 4. 11 H.4. 30. 2 R. 3. 14. 21 H. 7. 24. 7 E.6. Estoppel 162.

Cr.Jac. 15, 394. 6 Co.7.b. 8.a.

6 Co.7.b. Doctrin. placit.65,66.

Trin. ii Jac. Reg.

In Communi Banco.

Read's Case.

Co.Ent.144. pl.23.

READ port actiõ de Det vers Carter, executor de Yonge; q̃l plea cõmence in Cõmuni Banco, Hill 44 Eliz. Rot. 401. Les Jurors trove, q̃ le dit Yong fist son testamt & darrein volunt, & fist un A. s̃ executor, & jour de s̃ mort fuit possesse des biens ouster le value del det en demand, & morust, & devant q̃ le testamt fuit prove, le Def. prist les biens del testator en s̃ possessiõ, & medle ove eux, & puis & devant le purchase, le testamt fuit prove: Et si sur cest matr, le Def. serra charge come un executor de s̃ tort, ou nemy fuit le q̃stion. Et sur grand deliberation, Judgmt fuit done p̃ le Pl. Et en cest case ceux point fuer̃ resolve. ¶ Primermt, Quãt home morust intestate, & estrange p̃son prist les biens lintestate, & eux usa ou venda, en cest case c̃ fait luy (a) executor de son tort, Car coment q̃ le plea en tiel case soit, ne unq̃s executor, ne unq̃s administer come executor, & p̃ c̃ fuit object, que il covient paier dette ou legacy, ou fair auter chose come executor: Uncore fuit resolve, & bien agrée, en case q̃nt nul assume sur luy dẽe executor, ne ascun ad prise lr̃es dadministration, la le user des biens del mort p̃ ascun, ou le prisel de eux en son possession, q̃ est loffice dun executor ou administrator est bon administration a charger eux come executors de lour tort, car ceux a q̃ux le mort fuit indet, en tiel case nad ascun auter vers q̃ ils poient aver action p̃ recovery de lour dets. ¶ 2. Quãt (b) executor est fait, & il prove le testamt, ou assume sur luy le charge del volunt, & administer, en cest case si estranger

(a) 2 Leon. 223, 224. 1 Rol. 918. Noy 65. Swinb. 289, 380. Moor 14 N. Bendlow 72. 1 Ander. 11. Dyer 166. b. Devant 30. b.

(b) Swinb. 289, 380

ger prist ascũ des biens, & claimants eux p̄ ses ꝑper biens, eux use & dispose, come de ses biens demesne, c̄ ne fait luy p construction del ley executor de s̄ tort, (a) p̄ c̄ q̄ la est auter executor de droit, q̄ il poit charger; & ceux biens q̄ sont en tiel case prise hors de s̄ possession, apres q̄ il ad administer, sont assets en ses mains. Mes (b) comt̄ q̄ soit un executor que administer, uncore si lestranger prist les biens, & claimant dẽe executor, pay dets, (c) & receive dets, ou paya legacies, & intermeddle cõe executor, la p̄ tiel express administratiõ cõe executor, il poit ẽe (d) charge come executor de s̄ tort, comt̄ q̄ soit aut̄ executor de droit; Et ove c̄ accord 9 E. 4. 13. ¶ 3. En le case al barre, qn̄t le Def. prist les biens devant q̄ le droiturel executor ad assume sur luy, ou prove le testamt̄, en cest case il poit ẽe charge cõe executor de s̄ tort, car le droiturel executor ne serra charge mes ove les biens q̄ veigne a ses mains, puis q̄ il assume sur luy le charge del volunt. Nota Lectеur, ceux resolutions, & le reason de eux, & p eux vous mieux intẽdres vostre liures, q̄ autermt̄ semble prima facie a disagreer, 41 E.3.13.b. 50 E.3.9. 6 H.4.3.a. 11 H.4.83.b. 84.a. 13 H.4.4.b. 8 H.6.35.b. 19 H.6.14.b. 21 H.6.(f) 26 & 27. 32 H.6 7.a. 33 H.6.21. 21 E.4.5.a. 20 H.7.5.a. 26 H.8.7.b.8.a. 1 Eliz. Dyer (g) 166. 9 Eliz. (h) 255. Et issint le Quære in 1 Mariæ, Dyer (i) 203. bien resolve.

(a) Swinb. 289, 380
(b) Swinb. 289.
(c) N. Benlow 72. Moor 14. 1 Ander. 11. Dyer 166. b.
(d) Latch 160, 267 268. Noy 65, 86. 6 Co. 19. a. 1 Sid. 57. 1 Keb. 114. pl. 16. Cr. Car. 88, 89. Hob. 49, 266. Cr. El. 460, 565. 1 Rol. 919.
(e) Swinb. 289, 380 381. 1 Rol. 919.
(f) 21 H.6. 27. b. 28. a.
(g) Dyer 166. pl. 10, 11, 12. 1 Anders. 11. N. Benl. 72. 2 Brownl. 183. 184. Moor 14.
(h) 8 Co. 135. b. 9 Co. 39. a. 1 Rol. 918. Swinb. 351. 352. Dyer 355, 356 pl. 8. 1 Keb. 854. Went. 250. 2 Inst. 398.
(i) 1 Rol. 918, 1 & 2 Ph. & Mar. Dyer 105. pl. 17.

Construction des Statutes de Jeofails, &c. Amendment des Records, Fines, Common Recoveries, &c.

Mich. xxv & xxvi Eliz.

In Bank le Roy.

Playter's Case.

(a) Palm. 101. Cr. Jac. 665.
(b) 1 Ventr. 122, 123.

PLayter port action de Trns vs Warne; Quare clausum suū fregit, & (a) pisces (b) suos cepit, &c. (sans mre le number ou nature des pisshons;) Le Def. plead rien culp̄, & fuit trove culp̄ aux damages, &c. Et ore en m̄ cesty Term̄ en arrest de Judgm̄t fuit mre q̄ la count (q̃ ꝑ la ley doit ēe certain, p̄ c̄ q̄ est en maner le foundatiō del suit) fuit en le case al bark tout outterm̄t encertain p̄ 2 causes. ¶ 1. Que nappiert ꝑ le count de q̄l (c) nature les pisshons fuer̄, pikes, tenches, breams, carps, roches, &c. ¶ 2. Nappiert le certain (d) number de eux, mes generalm̄t pisces suos cepit; A q̃ fuit rn̄de ꝑ le councel del Pl. ¶ 1. Que c̄ fuit bō ꝑ le cōmon ley, car le verdict ad trove le Def. culp̄ al dam̄s, & p̄ c̄ ore non refert de q̄l nature ou de q̃l numbr̄ les pisshons fuer̄, mes prisel des pisshōs aux damages, en q̃l case le verdict ad fait le count (si c̄ fault form) bon. ¶ 2. Sēble a eux q̃ le coūt en actiō de Trn̄s sans expssing le number ou natures des pisshons fuit assets sufficient, entant q̃ les pisshons m̄ ne sont dēe recovs, mes damages p̄ eux: cōe en 20 H. 6. 19. en br̄ de (e) Disceit p̄ purchaser & jeck dun ꝓtection, & ne suppose en certain de q̃l nature le primer br̄ fuit, (come en Formedon, Assise, ou auter brief) que fuit delay ꝑ le protection, & uncore le brief fuit adjudge bon; Et en Trespass sur le case, le brief fuit que

(c) 1 Ventr. 105, 106, 272. 1 Rol. Rep. 25. Hard. 132. Palm. 101. Cr. Car. 18. Cr. El. 837. 2 Rol. Rep. 442.
(d) Cr. Car. 18. Plowd. 128. b. Cr. El. 866. 2 Rol. Rep. 269, 270. 1 Rol. Rep. 25. Cr. Jac. 435. Hardr. 132. Godb. 370. 1 Vent. 272.
(e) Doct. placit. 87. 20 H. 6. 18. a. Fitz. disceit 13.

que le Pl' retain le Def. p quadã pecuniæ summa solvend', &c. sans mře le quantity del summe, & uncore tenus bon en 11 H. 6. 55. b. ¶ 3. Si le ley require pluis (a) ĉtainty qñt al pishõs, donqs serr intend q̃ les Judges devant q̃ux cest issue fuit try, direct les Jurors a trov le Def. culp tantsolemt p le close, p q̃ le count fuit bon & nemy p le pishons p q̃ux le count fuit insufficient. ¶ 4. Admit que le count fuit insufficient en le form de ĉ p le cõmon ley, & q̃ ne fuit fait bon p le verdict, uncore semble a eux q̃ ĉ fuit remedy p lestatute de 18 Eliz. cap. 14. (car lestatute de 32 H. 8. cap. 30. nextend al counts) per quel act de 18 Eliz. apres vdicts, est purview; That all defaults in form in any Writ original or judicial, Count, Declaration, Plaint, Bill or Demand, sont remedy, & Judgmt pur eux ne serra stay. Et fuit dit, q̃ le omission de number & nature nest q̃ de form & nemy del substance del action, mes le substance est p prisel des pishons. Mes fuit resolve p Sir Christopher Wray Chief Justice, Sir Thomas Gawdy, & totã Curiam, encounter le Pl'. Et qñt al 1 & 2 objections, fuit respond & resolve, q̃ le declaration fuit insufficient, & ne fuit fait bon p le vdict, car le declaration covient a reducer le generalty del bř al pticularity, & a declarer ĉ q̃ est briefmt touch en le bř en certainty, a q̃ le Def. poit avº certain respons, & sur q̃ un certain Judgmt poit estre done, Quia (b) oportet quod certa res deducatur in judicium, & voyer est, si cest actiõ ust estre commence p original, le bř serra geñal: Mes le count doit aver comprehend les pishons en (c) certain, & ove ceo accord touts les presidents; Et 4 H. 6. 11. b. ou le bř fuit, Quare (d) piscem cepit, & count des tants des pikes en certain; & comt q̃ le brief fuit piscem en le singular number, uncore bene, car piscis est nomen collectivum, en q̃ le plural number est cõprehend. Vide 21 H. 6. f. 39. a. b. accord, q̃ le ĉtainty (e) des pishons serra alledge en le count, & grand incovenience sur ĉ ensuer, car mesq; lissue ad certainty ove que le Jury poit estre charge, neq; sur tiel general incertainty poiẽt ils estre charge en attaint sils don un faux vdict, Quant al 3 objection fuit respond & resolve, que quant les Jurors ont trove le Def. culpable (g) generalmt de transgress. in narratione, &c. ĉ sans question extend al ambideux les trespasses, & nul tiel entendmt serra prise come fuit object. Mes si le councel del Plaintiff ad fait sagemt, ils voilont aver cause les damages destre (g) sever, cestascavoir, tant pur les pishons, & tant p le close debruse, & donqs le Pl' recover damages

(a) Apres 121. a. 8 Co. 57. a.

(b) Co. Lit. 96. a. 303. a. Apres 38. a. 61. a. March 98. Hard. 132.

(c) Apres 120, 121. Hard. 132. Co. Lit. 303. a. Plow. Com. 121, 122. Cr. Car. 18, 573. 2 Rol. Rep. 96. Godb. 370. Cr. El. 837. Latch. 195. Cr. Jac. 435, 665. Palm. 101, 447. 1 Ventr. 53, 105, 106, 272, 329. 2 Jones 109. Doct. placit. 87. Kelw. 153. pl. 2. Noy 91. O. Bendl. 174.

(d) Br. general brief 9. Doct. placit. 84, 384. Fitz. brief 27. Br. brief 209. Br. faux latin 51.

(e) Fitz. brief 92. Br. faux latin 93.

(f) 2 Sand. 170, 171. Lane 98.

(g) Moor 708.

ges p̄ le close debruse ove ses costs. Quant al darrein objection fuit agreé p totam Curiā, q̄ lomission del nature & numbre des prisons fuit matter de substance, & nemy de form dée remedy p le dit act de (a) 18 Eliz. car default de form deins le dit act est tiel mat̄ de course, q̄ le (b) Clerk poit ab ceo supply & amend sans ascun information del pty, car le pty doit fair information del Verity del mat̄, & le Clark doit trahe c̄ en form: Mes en le case al barre, le Clark sans information del pty ne poit scav̄ le nature ne numbre del prisons, & p̄ c̄ nest default de form deins le purview del dit act. Mes Wray Chief Justice dit, q̄ chescun misprision del (c) Clark en chose q̄ il puit aver supply & amend sans information de le pty nest remedy p le dit act: Come si brief soit port vs executors en le (d) debet & le detinet, c̄ est le default del Clark, mes p̄ c̄ q̄ est en mat̄ de substance, cestascavoir, en le point del action, & nemy default de form, come lestatute parle, c̄ nest remedy p le dit act; Issint diversity ent mat̄ de course, & mat̄ de substance q̄ le Clark puit aver reform.

(a) 18 El. cap. 14.
(b) Palm. 123, 124. Cr. Car. 147, 148. Apres 36.a. 1 Leon. 300.
(c) 1 Jones 199.
(d) Hutt. 57, 79. Devant 31.a.b. Cr. Jac. 238, 411, 545, 546, 549, 685. 8 Co. 159.a. Cr. El. 350. 711, 712. 1 Rol. 603 927. Moor 566. 1 Bulst. 22, 23. Cr. Car. 225, 226. Palmer 116, 117. Noy 137. 2 Rol. Rep. 131, 132. 133. Stil. 61, 80, 81. Poph. 121. 1 Brownl. 56. 2 Brownl. 202, 203, 204, 205, 206, 207. Mod. Rep. 185. Allein 34, 42, 43. Lit. Rep. 342. 1 Keb. 189, 493. 1 Sid. 266, 342, 379. 2 Jones 169, 170. Hob. 282. 1 Vent. 271, 272.

Trin. xxx Eliz.

In Bank le Roy.

Walcot's Case.

Loyd port action de Det en le Cōmon Bank vers Walcot & la Dame Arnold sa feme, sur Obligac fait p la feme devant marriage; Le Def. plede al pays, & trove vers luy: sur q Judgmt fuit done. Les Def. port bre de Error, & divse errors fueront assign, quex touts fuer over-rule p le Court; Donqs un del councel ove les Def. mova q le brief fuit port vers eux en le detinet tantum, ou duist aver ee en le debet & detinet, car la feme q est party al actiō fist lobligac luy m, & (a) lentermarriage est done in ley al baron de touts les psonal biens, & disposition de touts ceux chatteux reals, & touts il ad a s oeps demesne, & nemy al aut use cōe executors ont: Mes sicome vers le bre de lobligor action gist en le debet (b) & detinet, p c q il ad assets de m lancestor en fee simple en s droit demesne, issint ad le baron les biens & chateux sa feme a s oeps, & p c le bre sert port vers eux en le debet (c) & le detinet, quod fuit concessum p totam Curiam; Donques fuit move, q c fuit default de form, & p c serra remedy p lact de 18 Eliz. cap. 14. p c q c fuit forsq (come fuit dit) le misprision del (d) Clark, le ql il m doit aver amend & supply. Mes fuit resolve p totā Curiam, q c fuit matr de (e) substance, & le very point del action, & le dit act remedy solemt default de form; Quel resolution accord ove lopinion de Wray Chief Justice en le case devant.

3 Leon. 206.

(a) Co. Lit. 351. a.

(b) Cr. El. 350, 712. 1 Jones 199. Plow. Com. 441. a. 10 H. 7. 8. b. 1 Sid. 342.

(c) 3 Leon. 206.

(d) Devant 35. b. Palm. 123, 124.

(e) 1 Bulstr. 152. Cr. Jac. 546. Devant 35. a.

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Trin. xxx Eliz.

In Scaccario.

Baynham's Caſe.

INT̃ Baynham & Brook in Ejectione firmæ ſur demiſe del Rectory de A. en A.B. & C. Le Def. plede rien culp̃, & le viſne vient ſolem̃t hors del A. & les Jurors trovont le Def. culpable: Et ſur c̄ Judgm̃t fuit done. Et en br̄ de Error ceſt Judgm̃t fuit revs, car le (a) viſne doit ēe hors del 3 villes; Et ceſt trial fuit reſolve dēe inſufficient, & inſufficient trials ne ſont remedy p ascun ſtatute, car leſtatute de 32 H. 8. cap. 30. ne extend al verdict done int̃ le dvant * & le (b) vouchée, ne al aſcun default en loriginal br̄, ou en le return de c̄, ou al want del original, ou en le count, ou al aſcun inſufficiency en le trial, verdict ou Judgm̃t, &c. Et leſtat̃ de 18 Eliz. c. 14. ſalve mults des dits defects, mes nemy remedy aſcun inſufficient trial, mes c̄ remain cōe fuit al cōmon ley. Et Wray Chief Juſtice dit, q̄ fuit ore tarde adjudge en bank le Roy int̃ Goodwyn & Franklyn, q̄ ou Venire facias fuit agard al (c) Coroners, ou duiſt aver ēe agard al viſcount, & iſſint les Jurors return p un q̄ nad authority, q̄ c̄ fuit en nature dun inſufficient trial, & p̄ c̄ ſur conſideration des dits Statutes, & del opinion en 21 & 22 Eliz. 367. Dyer, fuit reſolve q̄ c̄ ne fuit remedy p aſcun des ſtatutes: Mes p̄ ceſt cauſe novel Venire fac̄ fuit agard: Et verũ dixit, car jeo fuy accouncel ove Franklyn en m̃ le caſe. Mes le principal Caſe en le Sñr Dyer fuit tenus bon ley, p̄ c̄ la Venire facias fuit agard ex (d) aſſenſu partium, & omnis (e) aſſenſus tollit errorem. Et en ceſt caſe Wray Chief Juſtice dit, q̄ ad ēe adjudge en ceſt Court in Gardiners Caſe, q̄ ſi ſur le Venire fac̄ forſque (f) 23 ſont retorñ, & 12 appear, & donñ un verdict, c̄ eſt remedy p les dits acts de 32 H. 8. & 18 Eliz.

(a) Stiles 8. Cr. Car. 17, 162. Cr. Jac. 631. Stat. 21 Jac. c. 13. 2 Rol. Rep. 258. 1 Sid. 19. Cr. El. 664.

(b) 8 Co. 162. b. 11 Co. 6. b. 1 Anderſ. 26, 27. pl. 60. O. Benl. 12. N. Benlow 37. Benl. in Kelw. 207. b. Benl. in Aſh. pl. 5. Hob. 281. 21 Jac. c. 13.

(c) Godbolt 429. 2 Rol. Rep. 363. Cr. El. 574, 586, 894. 8 Co. 162. b. 163. a. Hutt. 26. Co. Lit. 125. b Cr. Jac. 21. Yelv. 15. 1 Rol. Rep. 28. 3 Bulſt. 175. Moor 356. Dyer 367. pl. 40. 2 Rol. 668, 669. 1 Brownl. 134.

(d) Co. Lit. 125. a. 126. a. Cr. El. 664. 2 Rol. Rep. 363. Hob. 5. Jenk. Cent. 310. Apres 40. b. O. Bendl. 83. Godbolt 429

(e) Co. Lit. 37. a. 126. a. 180. a. Apres 40. b. 2 Rol. Rep. 363. 1 Bulſt. 216.

(f) Cr. El. 194, 586, 587. Apres 37. a.

Pasch. xxxi Eliz.

Rot. 301. In Bank le Roy.

Gardiner's Case.

INt Tirrel & Gardiner sur issue join, 23 (a) Jurors fueront tantum retorn, dont 12 appear, & done Verdict; Et c̃ fuit mise en arrest de Judgment. Et sur grand deliberation fuit resolve, q̃ c̃ fuit remedy p le statute de 18 Eliz. c.14. Et sur c̃ Judgment done accordant; Que fuit le case que Wray Chief Justice cite en le case prochein devant.

(a) O.Benl.95. Cr. El. 194, 586, 587. 2 Brownl.274. Cr. Car.223, 224, 278, 279. Devant 36.a. 1 Jones 245, 302, 357. 1 Rol. 800. Cr.Jac.647. Latch 54. Savil 124. 1 Sid.66.

Pasch. xxxiv Jac.

In Bank le Roy.

Bishop's Case.

MAthew Bishop port Action sur le case envers Michael Harecourt en le Comon Bank p original bre, compernant count le Def. en considerac q̃ le Pl' ad done & delive al Def. un chival, & q̃ le dit Pl' promise al Def. q̃ il sur 90 l. a luy p le dit Def. dee pay, voile delive al dit Michael un Indenture, inter William Ward ex una pte, & Agnete Frawkener ex altera pte fact', &c. & un obligac, p q̃ Thomas Ward & Xpofer Bishop, fuer lie al dit Agnes, &c. en 500 l. assume, & le dit Pl' pmise a payer a luy 90 l. Term Trin pixm ensuant. Et le Pl' count, & le bre & count en tout agree, mes solement en c̃, : q̃ ou p le bre le dit bond de 500 l. fuit alledge dee fait p Th. Ward & Xpofer Bishop, &c. en le count il fuit nosme Geo. Bishop, &c. Et le Def. plead no assumpsit, & trove vers luy, & Judgment done

1 Leon. 210, 211. 1 Anders. 240. Cr. El. 210.

3 Bulstr. 224, 228. 1 Rol. Rep. 432. 2 Rol. Rep. 252. Cr. Jac. 629, 630. O. Benl. 51. Palm. 193.

dōe accord. Et le Def. port bř de Error, & assigna divers frivolous errors, a quer le court ne prist ascun regard, & donqs un auť error nient assign fuit move, s. le dit variance inť loriginal bř & le count, Car le count en le Cōmon Bank touts foits recite le bř, p ql appiert, q̄ le bř fuit Xpofer Bishop, (q̄ fuit un des obligors en le dit bond) & le count fuit George Bishop. Et sur c̄ aps in nullo est erratum plead, le Pl' p Cerciorari hors del Bank le Roy, remova loriginal bř, p q̄ le variance appiert al court. Et fuit move, q̄ c̄ serra remedy p lestatute de 18 Eliz. cap. 14. p q̄ est purview, q̄ aps verdict, nul judgmt serra reverse p̄ ascun default en form, &c. ou p̄ ascun default dascun bř original, ou judicial, ou default en process; Et icy fault original bř en nr̄e case, car lactiō sur le case consist sur 2 pts, s. sur consideration, & assumpsit: Et qnt al consideration, le bř & count vary, & issint nul original bř a garranter cest count; & si c̄ ne serra deins le lr̄e del act, uncore serra deins le meaning & entent de c̄, p̄ c̄ q̄ fuit en owel mischief. Auxy fuit move, q̄ aps in (a) nullo est erratum plead, nul bř de Diminution, ou Certiorari serra agard, come est agrée (b) 7 E. 4. (c) 25. b. (d) 22 E. 4. (e) 28 H. 6. 10. b. Mes si ascun serř agard p le discretion del Court, c̄ serra solemt dassertainer eux del verity p̄ amender le record en choses amendable, ou a salv le former Judgmt, solonq le verity del case; mes ne unqs a reverser le Judgmt, come serra en nr̄e case. Mes qnt al primer fuit rnd & resolve p totam Curiam, q̄ cest (f) variance enť loriginal bř, & le count, ne fuit remedy p lestať de 18 Eliz. ne asc̄ auť statuť. Et divsity fuit prise p le Court, qnt fuit (g) un original bř, q̄ en matť de substance vary del count, c̄ ne fuit remedy p le dit act, Quia * casus omissus & oblivioni datus, dispositioni juris cōmunis relinquitur; Mes qnt est (h) nul original bř, c̄ fuit expressemt remedy p lact. Et qnt al 2 point, ils touts agreont, q̄ qnt loriginal bř est remove, (soit c̄ devant in nullo est erratum plede, ou aps,) & matrial variance appiert al Court enť le bř & le count, le Judgmt serra reverse: Et issint ad estre fait devant ceux heures come Wray Chief Justice dit.

(a) 1 Jones 9, 140. Latch 152. Noy 83, 84. 1 Rol. 764, 765. Stiles 175, 176. 1 Rol. Rep. 432. 2 Bulst. 71. Cr. Jac. 6, 141. Cr. El. 84, 155, 281, 282, 836. 837. 1 Leon. 22, 23, 176. 2 Leon. 3. 1 Sid. 139. Hard. 112. Palm. 285.
(b) 2 Bulstr. 71. 1 Leon. 22. 2 Leon. 3. Palmer 285. 1 Jones 140.
(c) Fitz. error 44. Br. error 166.
(d) 22 E. 4. 45. b. 46. a. b.
(e) Fitz. error 29. Br. error 12.
(f) 8 Co 163. a. 3 Bulst. 224. 2 Rol. Rep. 252. Cr. Jac. 629, 630. O. Benl. 51. 1 Rol. Rep. 432 Palm. 193. Winch. 69.
(g) 1 Jones 304. Cr. El. 722. Cr. Jac. 185, 654. Doctrin. placit. 385. Yelv. 109. 3 Bulstr. 224. 1 Sid. 84.
(h) 3 Bulstr. 224. Doct. placit. 385. Cr. Car. 272, 282. Cr. Jac. 185, 654, 655. Cr. El. 722. 1 Sid. 84. 1 Jones 304.
* 5 Co. 4. Caudries Case.

Triñ

Trin. xxxiv. Eliz.

In Bank le Roy.

Teys Case.

THomas Tey & Elianor sa feme levy un fine al Robert Drury & Thomas Cannock, & al heirs de Robert Drury, des Manors de Layerdelahay, Layer Bretton, & de divers auters Manors, & de grand numbre des acres de terre, prée, pasture, &c. en Layerdelahay, Layer Bretton, Magna Bretton, Magna Birch, & plusors auters villes en le County de Essex: Et en m le fine divers grants & renders fuer faits; Et en le tierce render les Manors de Layerdelahay, Layer Bretton, & divers auters Manors, & tenementa prædict' in Layerdelahay, Layer Bretton, Neverds & Magna Birch fuer grant & rend al dit Thomas & Elianor, & al heirs del dit Thomas; Et per le quart render 115 acres de terre en Layer Bretton & Magna Birch fuer grant & rend al Elianor en tail, le remainder al droit heirs de Sir Thomas Tey; Et apres le mort de Thomas Tey, William Tey son frere & heir port brief de Error, & assign Error en le grant & render fait per Drury & Cannock; Et ceo fuit pur le repugnancy enter le tierce & (a) quart render, car per le tierce render, touts les tenements en Layer Bretton & Magna Birch fuer al Thomas & Elianor, & al heirs de Thomas; & per le quart render certain des dits tenements sont grant & render al dit Elianor en tail, le remainder al droit heirs de Sir Thomas Tey: Issint un mesme chose est grant & render a several persons, & de several estates, & issint repugnant & erronious: Car fuit dit, que un fine est semblable a un Judgment, car Scire facias gist pur executer ceo, come dun Judgment, & oportet (come Bracton dit) Quod (b) certa res deducatur in Judicium: come en case ou sont deux demãdants, & le Court adjudgera

(a) Jenk. Cent. 256.

(b) Devant 35. a. Co. Lit. 96. a. 303. a. Hardr. 132. Apres 61. a. March 98.

adjudgera un mesme chose a chescun demandant severalment, ceo serra Error, cibien pur le repugnancy, come pur le (a) aweroust, a que de eux le Court ferra execution: Come en le case de 3 H. 6. fol. 44. b. ou deux avowants sont, & lun avowe pur rent service, & lauter pur rent charge, ambideux avowries (b) abatera, Car le Court serra en aweroust a que de eux return serra agard; Issint icy en le case al barre, pur ceo que mesme le chose est grant & rend en le 3 render al un, & en le 4 al auter, pur ceo que ambideux ne poient aver un mesme chose, pur le contrariety & incerteinty, a que le Court ferra execution, ceo est erronious. Et fuit ouster object, que un fine covient estre pluis certein que un Judgment, ou ascun auter record, Car fine ne poet estre receive esteāt levy a deux (c) & a lour heirs, come est tenus en 2 H. 5. fol. 7. a. b. & 24 E. (d) 3. Et home ne poit conuser le droit al deux, come est tenus en 27 E. 3. f. 79. Ne fine ne poit estre levy sur (e) condition, come est tenus en 22 H. 6. Mes apres plusors arguments al barre & al bench; Primerment, Fuit resolve per eux, que le (f) quart render, quant a ceo que fuit contein deins le tierce render, serra de mesme le condition & quality en construction, come un charter, ou auter conveyance enter party & party, & ne besoign daver tiel precise form, come un brief ou un Judgment. Mes un conusans dun fine, & un grant & render averoit autiel construction, come un auter (g) conveyance enter party & party; car ceo ad parols de grant & render, pur ceo que est un conveyance de record: Et coment que un fine poit estre refuse en cases que ount estre mis; uncore si tiels fines soient receive, ils serront assets bon en touts les dits cases, car fieri non debuit, sed factum valuit; Et pur ceo, si fine soit accept a deux & lour heirs, ou si le conusans de droit soit a deux; ou si fine soit sur condition, en touts ceux cases, & auters semblables, le fine (h) estopera, & ne serra reverse per brief de Error. ¶ 2. En le argument de cest case, touts les parts dun fine sur Conusans de droit come ceo, &c. fueront recite, & peruse; Et fuit resolve per tout le Court, q̃ sont 5 (i) parts de chescun fine, cestascavoir, original brief, car sans (k) original brief fine ne poit estre levy, come appiert per le statute De (l) modis levandi Fines, que order del ley ne suffer mye, que final accord soit levy en la Court le

(a) Devant 19. a. Hob. 128. 1 Rol. 353. Moor 864, 865.
(b) Devant 19. a. Plowd. 10. b. Manxels Case. 21 R. 2. Fitz. Avowry 262. Br. Avowry 6. in fine. Moor 865.
(c) Fits Fines 15, 77. 7 H. 4. 7. b. 24 E. 3. 36. b. 37. a. Br. Fines 10, 31. 33 H. 6. 52. b. 2 Co. 72. b. 1 Leon. 62. 3 Co. 84. a.
(d) 24 E. 3. 36. b. 37. a. Fitz. Fines 77
(e) 2 Rol. 18. 44 E. 3. 22. a. Fitz. Fines 15, 36. 27 H. 8. 24. a. Br. Fines 5, 10. Br. Done 3. 33 H. 6. 52. b. Perk. Sect. 629. Plowd. 34. b.
(f) Jenk. Cent. 256
(g) Jenk. Cent. 256 Apres 45. b. 6 Co. 66. b.
(h) 27 H. 8. 24. a. Br. Fines 5.
(i) Raym. 71. Co. Lit. 121. a. 2 Inst. 511.
(k) 2 Inst. 513, 514 1 H. 7. 9. a. Br. Fines levies, &c. 85, 97. in fine. Fitz. Fines 27. 21 E. 4. 4. b. Plowd. 394. B. N. C. 461. Fitz. Assise 13. Br. Assise 396. Fitz. Error 28. Br. Judgment 114, 130.
(l) 2 Inst. 510, 511, &c.

le Roy sans bre original; Et issint est tenus 37 (a) Ass. pl. 17. Et sur chescun brief, p q̄ terre est demande, ou per q̄ terre est destre charge ou lie, ou que en ascun sort concerne terre, &c. (b) fine poit estre levy. Vide p̄ c̄ 5 E. 2. tit. Fines Statham, & 18 E. 4. 22 a. b. 19 E. 4. 2. 21 E. 4. 4. b. 32 E. 3. Scire facias 100. in Præcipe, in Garr̄ de Charter, in brief de Mesne, in Quid juris clamat, Per quæ servitia, in Ration̄ dimiss. & similia: 2. Coviẽt est licẽce ou (c) conge daccorder, p q̄l licẽce la est (d) fine due al Roigne, q̄ est ancient revenue del Corone, & ceo est (e) appell' Silver le Roigne, & c̄ appiert pleinmt p le dit statute de modo levandi Fines. Et le entry del Silver le Roigne en tiel case al barr, fuit tiel: Robertus Drury Armig̃ dat Dñæ Reginæ septem libr p licentia concordandi cum Tho. Tey Armig̃ & Elianora uxore ejus, de placito cõventionis, de mañiis de, &c. & habet Chirographum p pacem admissum, coram Jacobo Dyer. Et nota bene, le use est q̄ cestuy en q̄ le fee (f) repose, done largẽt le Roign̄, & ney lawt conusee, q̄ nad q̄ p vie; & touts les presidẽts accord a c̄. Et nota, le Silver le Roigne est enter sur le bre de (g) covenãt, & coviẽt derpsser primermt le summe done p licence daccorder. 2. Le pty q̄ paier c̄, cestascavoir, cesty en q̄ fee repose. 3. Le plea, & enter qur, &c. & 4. le terre p q̄ le fine est paie; Et tout c̄ fuit bien observe en le case al barre. 3. Le concord, & c̄ cõmence issint: Et est concordia talis, s. qd' præd' Tho. & Elianora recognoverũt mañia, &c. esse jus, &c. Et notandum est, q̄ c̄ est le fouñdation & substãce del fine, Car si sur c̄ le (h) Silver le Roigne soit enter, comt q̄ le conusor morust apres, le fine est bon, come fuit adjudge en Carrel's Case, 5 Eliz. 220. b. Dyer, & le note & le pee del fine ne sont sorsq; abstracts hors de c̄, mes le concord est le ground & substance del fine. 4. Le note del fine, & c̄ nest forsq; abstract hors del original & le concord, & commence en cest manner, s. inter Robertum Drury & Thomam Cannock querentem, & Thom̄ T. & E. uxorem ejus deforcean̄, de maneriis, &c. unde placitum conventionis summonit fuit inter eos, s. quod prædict' Tho. Tey & Elianora recognoverũ maneria, &c. esse jus, &c. Mes fuit observe, q̄ en ancient livres, le note del fine est prise p le concord, come en 12 H. 4. f. 16. a. q̄ le (i) note del fine est pleadable devant le fine ingrosse; & (k) 22 H. 6. 51. accord. Mes c̄ est entend del cõcord m̄; Et touts les pleadings en Quid juris clamat, &c. q̄ le lessee avoit fee jour del note levie, sont destre entend del concord m̄. 5. Le pee del fine, & ceo commence issint, cestascavoir; Hæc est finalis cõcordia facta in Curia

(a) Br. Judgment 114. Br. N. C. 461. Br. Error 129. Br. Fines levies, &c. 82.

(b) 2 Inst. 513.

(c) 2 Inst. 511, 512.

(d) 1 Leon. 249, 250. 2 Leon. 56, 179, 233, 234.

(e) Apres 43. b.

(f) 2 Inst. 512.

(g) Apres 43. b. 44. a. Dyer 320. pl. 19.

(h) Co. Ent. 231. a. Hob. 330. 2 Inst. 511, 512. 4 Leon. 96. 2 Sid. 56. Dyer 220. pl. 15. Hutt. 135.

(i) Doctrin. placit. 307. Br. Fines levies, &c. 41.

(k) 22 H. 6. 13. a. Doct. placit. 307.

Dñi Regis apud Westm̃ à die Paschæ in quindecim dies, anno, &c. coram Jacobo Dyer, &c. issint q̃ le pẽe del fine include tout, & ad le jour, an, lieu, & devant quex Justices le concord fuit fait. Et un fine est dit estre * ingrosse, quñt le Cirographer fait les Indentures del fine, & deliver eux al party a que le conusans fuit fait. Et est ascavoir, q̃ si fine soit levy dun reversion, le conusee maintenant (a) apres le conusans, q̃ est le concord, covient suer un Quid juris clamat vers le lessee; car si le conusee targe tanq; le fine soit ingrosse, il ne unques avera (b) Quid juris clamat, car maintenant p le record & conusans, le reversion passe, Fitz. Nat. Br. f. 147. & 22 H. 6. 57. accord'. Et al common ley maintenant apres le fine ingrosse, ceo fuit maunde en le (c) treasury, come appiert en 17 E. 3. 29. a. Mes ore p le statute de 5 H. 4. c. 14. est purview, que touts les parts del fine sert (d) enroll' ove le chief Clark del Bench (q̃ est le Custos Brevium) devant q̃ le Cirographer ad eux hors del Court. Et notá, devant cest statute le Custos Brevium nad ascun record del fine, mes le Cirographer, & riens remain ove le chief Justice del common Bank forsq; le licence daccorder. Et nota, est purview p m̃ lestatute, q̃ original bre serra de record, &c. Et luse est a directer un bre Derror al Chief Justice del Bank, auter al Custos Brevium, a certifier transcript pedis finis, & auter al Cirographer, a certifier transcriptum notæ finis. Et nota, ceux parols sont adde en le brief al Custos Brevium, cum * omnibus eundem finem tãgeñ, p force de queux parols il certifie le original bre. ¶ 3. Fuit resolve, que le conusor ne assignera error en le grant & render, per q̃ il m̃ prist estate, nient pluis q̃ le conusee serra en le conusans, car c̃ est a defeater lestate, q̃ p le fine est done a luy m̃, ne le recovoror portera brief de error a defeater record en que il m̃ recover, car le Judgment en brief de Error est destre restore a tout ceo que il perde per le fine ou Judgm̃t, & nemy dadoper & perder c̃ q̃ il ad gaine p le fine ou Judgm̃t. 7 E. 3. 25. b. Home ne reversera Judgm̃t p Error, sil ne purr̃ mxe que le Error soit en son (e) disadvantage, 8 H. 5. 2. b. & Fitz. Nat. Br. 21. accord'. Et puis le fine fuit affirm.

* F. N. B. 147. a.

(a) F. N. B. 147. a. 3 Co. 86. a. 6 Co. 68. a. Br. Quid juris clamat 14. Br. Attornment 25. 22 H. 6. 13. b. Plowd. 431. b.

(b) F. N. B. 147. a.

(c) Fitz. Scire facias 8.

(d) Lane 62.

* Dyer 89. pl. 2.

(e) 8 Co. 59. a. 7 Co. 4. b. 1 Rol. 757, 759, 760, 784. Palm. 39. 11 Co. 56. a. Jenk. Cent. 256. 257, 286. Fitz. Error 92. Br. Error 37. 8 H. 5. 2. b. F. N. B 21. f. 7 H. 4. 16. a. 11 H. 4. 88. b. 89. a. 2 Sand. 46. Cr. Eliz. 84, 107. Dyer 315. pl. 99.

Paſch. xxxv Eliz.

In Bank le Roy.

Dormer's Caſe.

Common Recovery. Poph. 22, 23, 24. 2 Inſt. 519.

William Dormer Armig̃, fits & heir Jeoffry Dormer, port brief de Error ſur Judgment done en brief de Entry en le poſt, ſur q̃ common recov̄y fuit ew en le Common Bank, enter John Crooker & George York Demandants, & le dit Jeffrey tenant, de manerio de Farninghoe cum pertiñ, & ſex meſſuagiis, ſex cottagiis, duodecim gardinis, 400 acris terræ, 60 acris prati, 400 acris paſturæ, 2 acris boſci, 600 acris jampñ & bruer̃, & 40 ſolidat̃ reddit̃ in Farninghoe; ac de uno annuali redditu ſive pentione quatuor marcarum, exeuñ de Eccleſia ſive Rectoria de Farninghoe in Com̃ Northampt̃, & q̃ le tenant vouch H. le common vouchee, & Judgment fuit done, Ideo conſideratum eſt qd' prædict' Georgius & Johannes recuperent ſeiſinam ſuam verſus præfat̃ Galfridum de mañio, tenement̃, & reddit̃ prædict' cum pertiñ; ac de * advocatione Eccleſiæ p̃d'. Et quod idem Galfridus habeat de terra p̃d' Henrici le vouchée ad valenc̃, &c. En ceſt record divers errors fuer̃ aſſigne. ¶ 1. Pur c̃ q̃ le brief de Entry fuit de uno annuali redditu, ſive pention quatuor marcarũ, exeuñ de Eccleſia ſive Rectoria; fuit dit, q̃ c̃ fuit erronious p̄ deux cauſes; 1. Pur c̃ q̃ un pention eſt ꝑpermt̃ un ſumm̃ demandable en le (a) Eccleſiaſtical Court, & rent eſt choſe demandable p̄ n̄re ley; 2. Le demãde del rent, ſive pẽtion, en le (b) disjunctive, eſt tout ouſtermt̃ incertain, & cheſcun Præcipe coviẽt eſtr̃ de choſe certain, car comt̃ q̃ le grãt ſoit en le disjunctive, le Præcipe en br̃e Dannuity ſerra de choſe * certein, Vid. 11 E. 3. tit. (c) Annuity 27. 5 E. 4. 6. Et vide in mes Reports Sir Rowland (d) Heywards Caſe. Mes aukmt̃ eſt en Aſſiſe, Vide 3 E 3. Aſſ. 175. 11 Aſſ 8. & 29 Aſſ. 7. 11 E. 3. Variance 69. Alternativa petitio non eſt audiẽda. Un auk error fuit aſſigne, q̃ br̃e de Entry en le poſt ne giſt dun Advowſon,

* 2 Vent. 32. Poph. 22, 23. Mod. Rep. 250. 2 Rol. Rep. 67. 2 Co. 74. a. Jenk. Cent. 257. Cr. Car. 270. Apres 40. b. Raym. 71. 1 Rol. Rep. 303.

(a) Poph. 23.

(b) Poph. 23.

* F. N. B. 152. h. Co. Lit. 145. a.

(c) 2 Co. 37. a. Apres 41. a.

(d) 2 Co. 37. a.

dowson, come appiert p lestatute de Westm 2. (a) c. 5. 4 E. 3. 162. 14 H. 4. 33. a. niēt pluis q̄ de cōmon de pasture, 4 E. 3. 146. 27 H. 8. 12. a. Mes le Judgmt fuit affirm p totā Curiā. Et en cest case 4 points fuer resolve. ¶ 1. Que un cōmon recovery nest pas destre resemble al Judgmt ou pceeding en alcun aut real action, p 3 causes, 1. Pur c q̄ c est ore p usage & custom devigne un cōmon (b) assurance & conveyance des terres, &c. car poit estre averte al use, & si tenant p vie suffer cōmon recovery, c est (c) forfeiture. 2. Que c est ewe p mutual consent des pties, & (d) consensus tollit errorem, 39 E. 3. 1. le demandant & tenāt cōsent, q̄ 2 (e) des 4 en bre de Droit serra esquiers, ou p le ley ils doiēt estre chivalers, & bene, quia p cōsent. 44 E. 3. 6. b. trial de (f) villenage alter del natural trial p cōsent. 7 H. 6. 7. b. pleder feoffmt en * fee sur condition sans fait & reentry est bon, si lauter pty confesse le cōdition, 34 E. 3. tit Offic de Court 12. Si 12 sont jure, & un dept, (g) un auter del pannel p cōsent poit estre jure, & ove le xi done vdict, 11 H. 6. 13. Le Court en Quare impedit, p cōsent poit done pluis longe jour q̄ est limit p lestatute de * Marlbridge, 11 H. 4. Lestatute de ‖ 2 E. 3. & † 20 E. 3. pvide, q̄ neq p le grand seal, (h) ou petit seal, Justice ne serra delay; unc qnt le matter concern le Roy solemt, sil commanđ c, poit estre staye, Fitz. Nat. Br. 21. b. 27 H. 8. Tenur poit estr creat a cē jour p cōsent de touts, niēt obstāt lestatute de Quia emptores terrarū, 6 E. 6. Dyer 78. Per special cōsent des pties, (i) reentry poit estr p default de paymt del rent sans demand de c; Et pluisors auters cases fuer mys, ou consent del parties altera le form & course del ley, 3. Autermt nul assurance poit estre de (k) advowson, (l) commons en gross, &c. a barrer remainders ou revsions dependant sur estate tail. Mesme la ley de common de pasture, franchises, liberties & privileges, come daver biens de felons, &c. waifes, straies, &c. Et sæpenumero necessitas vincit communem legem, & quod necessarium est, licitum est. Come si deux Jointenants (m) sont de terre a eux, & a les heirs de lun de eux, ils ne joindr en brief de Droit: Mes 2 jointenants a eux & a les heirs de lun de eux dun advowson, joindr en brief de Droit dadvowson. Et le reason de divsity est, p c q̄ en le primer case ils ount several means & remedies; come est agree en 46 E. 3. 21. b. Mes en lauter case, si tenant p vie ne joyndr ove cesty q̄ ad fee, ne lun ne lauter avā ascun remedy; & p c en tiel case, necessitas vincit legem. Vide 21 E. 3. 27. & nota dictum de Stone la. Vide Sir W. Pelhams (n) Case en mes primer Reports.

¶ 2. Quant

(a) 2 Inst. 353, 354, 355, &c.
(b) Jenk. Cent. 257. Poph. 23. Apres 46. a. 1 Co. 15. b. Cr. Car. 270.
(c) Poph. 23. 1 Co. 15. b. 10 Co. 44. a. 2 Leon. 60, 61, 62, 67. 4 Leon. 123, 124, 125, &c. 133. 1 Anders. 227. Co. Lit. 356. a. 362. a. Moor 271. Vaugh. 51. 2 Brownl. 170. 1 Rol. Rep. 304. 2 Co. 74. a. 3 Co. 4. b.
(d) Co. Lit. 37. a. 180. a. 126. a. 5 Co. 36. b. 2 Rol. Rep. 363. 1 Bulstr. 216.
(e) Godb. 429, 430. 39 E. 3. 2. b.
(f) Godbolt 429. 1 Rol. Rep. 28. Raym. 372.
* Doct. placit. 176.
(g) Godb. 429.
* 52 H. 3. Stat. de Marlbridge c. 12. 2 Inst. 123, 124.
‖ 2 E. 3. c. 8.
† 20 E. 3. cap. 1.
(h) F. N. B. 240. d.
(i) Palmer 411. Godb. 429. 1 Rol. 459.
(k) Mod. Rep. 250. 2 Vent. 32. Poph. 22, 23. 2 Rol. Rep. 67. Jenk. Cent. 257. 2 Co. 74. a. Cr. Car. 270. Raym. 71. 1 Rol. Rep. 303.
(l) Jenk. Cent. 257. Poph. 23.
(m) Br. Jointenants 6.
(n) 1 Co. 14. b. 15. a. b. 2 Leon. 60. 4 Leon. 123. Moor 271.

¶ 2. Quant al demand de rent, (a) ou pention de 4 marks issuant hors de Rectory; Fuit resolve, q̃ le brief fuit assets bon, car icy nest ascun (b) incertainty, car un de deux several choses nest demande, mes un sõ chose solemẽt est demande, car le demand est dun rent, ou pention de 4 Marks, issint que la nest q̃ un 4 Marks: Et en cest case redditus & pentio (come cest case est) sont synonima, Car ceux darrein parols (exeunt de Rectoria) prove ceo destre un rent, car si fuit forsq; annuity, donques ne serroit issuant hors del Rectory, mes le Parson en tiel case serr charge en respect del Rectory. Et en 11 E. 3. tit. (c) Annuity 27. la un grant per fait quandam annuam pentionem unius robæ precii unius marcæ, vel unam marcam, 22 E. 3. 4. Lacies Case, la un Abbot grant quandam annuam pentionem, &c. & Fitz. Nat. Br. 231 H. le bře de annual pentione: Per queux appiert, q̃ pentio & annuitas, ou annualis redditus, sont tout un, & principalmẽt en le case al barre, qñt ceo est alledge destre issuant hors del Rectory. Et si brief soit port de redditu, sive annuitate, exeunt hors de manerio de Dale, ceo est assets bon pur les causes avantdits. ¶ 3. Fuit auxy resolve, que common recoveries sont cy usual, & lour form & order de proceeding cy notorious per appearances le primer jour, & gratis &c. que le ley de eux prist conusance, & pur ceo les Judges ex officio sans allegation del party, prender notice que ils sont recoveries ewe per consent des parties, pur assurance des terres; come in Wimbishe & Talboys Case Plowd. Com. 56. Recovery en Formedon appiert al Judges destre per consent des parties, pur ceo que le tenant ne fuit essoine, ne demand le view, &c. mes appiert le primer jour & confesse laction. Vide Plowd. Com. 515. in Stowels Case, que le common (d) usage en ceux cases de recoveries est destre allow, & que en eux lentent des parties est destre observe.

(a) Poph. 23.
(b) Palm. 265.
(c) Devant 40. a. 2 Co. 37. a. Co. Lit. 145. a.
(d) 2 Co. 74. a.

Mich. xxxv & xxxvi Eliz.

In Bank le Roy.

Rowland's Case.

IN Ejectione firmæ inter Johanñ Rowland, alias Steyner Pl', & William James, & William Sherive Def. de terre en W. in Com̃ Wigorñ: Sur rien culpable plede, le Jury done verdict pur le Pl'. Et ore fuit move en arrest de Judgm̃t, q̃ sur le Venire facias nul retourñ fuit endorce, ne ascun (a) nosme de ascun visc̃ appiert sur le dorce del brẽ, nec quod executio brevis p̃d' patet in quodam panello, &c. sed un pannel dun Jury ove lour manucaptors fuit annexe & consut al dit brẽ, & auxy Tales fuit agard, & pannel del Tales annexe, mes nul retorñ de eux, ne nosme de viscount a ceo; mes le Postea fist mention q̃ eux fuer̃ retorñ p visc̃, per mandatum Justic̃. Mes fuit move q̃ c̃ ne server̃, car le viscoũt covient retorñ les Jurors, & les Tales auxy, & ou nest ascun retorne, c̃ nest remedy p lestatute de 18 le Roigne Eliz. cap. 14. ne per ascun auter statute, mes insufficient retornes, ou que fault form, &c. Et pur c̃ un notable president fuit cite, & Judgmeut done en Common Bank Triñ ultim̃ p̃terit̃, inter Harbert Barney, & alios quer̃, & (b) Walkley Def. Trin. 35 El. Rot. 1251. q̃ ensuist en ceux pols: Postea cõtinuato pcessu inter partes p̃d' de placito p̃d' p Jur̃ posit̃ inde inter eos in respectũ hic usq; hunc diem, &c. Et modo ad hunc diem venerunt tam p̃d' H. B. &c. quam p̃d' J. W. per Attorñ suos p̃dict': Et super hoc idem Johẽs W. cur̃ hic dat̃ intelligi, qd' quoddam brẽ de Venire facias hic duodecem, &c. inter partes præd' de placito præd', à die sanctæ Trinitatis in tres septimañ ultimo p̃terit̃, retornat̃ fuit album, & absq; aliquo indorsamẽto sive scriptura super dorsum ejusdẽ brevis in ligulis Civitatis Glouc̃ annex', arraiat̃ inter brẽa de tres septimañ sanctæ Triñ remaneñ affilat̃, nullamq; faciendo mẽtionẽ su p brẽ illud de aliquo Vicecomite, qui retorñ brẽis illius warran-

(a) Cr. El. 310. 2 Rol. Rep. 210. 3 Bulstr. 220. Cr. Jac. 188, 443, 528. 8 Co. 162. b. 163. a. Cr. Car. 189. Cr. El. 466, 509, 704. Noy 115. Moor 65, 868 Yelv. 110. Palm. 152. 21 Jac. c. 13. 1 Rol. 204. Hob. 130.

Harbert Barnies Case, Trin. 35 El. in Communi Banco.

(b) Cr. El. 310. 1 Rol. 204.

warrantizaret, nec quod executio patet in dict' pannell eidem brevi annex', petendo quod breve illud una cum pannello de nominibus Jur & process. inde retornat adnihiletur, & p nullo habeantur. Super quo bri præd', ac dorso ejusdem brevis, una cum pannell annex', per Justic hic vis. & inspect', dicta allegatio dicti Johannis Walkeley comperta est vera. Ideo consideratʼ est, quod præd' bre de Venire facias, ac pannell eidem brevi annexat, necnon totus processus superinde retornat, adnihilentur, & pro nullo habeantur. Et super hoc præd' H. B. &c. petunt bre Dnæ Reginæ Venire facias de novo hic duodecem, &c. ad triandum exitum pdict' superius junctum, & eis cõceditur: Ideo pceptũ est Vicecom, qd' venire faciat de novo hic in Cro sanctæ Trinitatis duodecem, &c. per quos, &c. Et nota que le dit exception fuit prise apres verdict, come en nre case al barre. Et vide autiel president Mich. 32 H. 8. Rot. 112. in Communi Banco; Mes la, Curia advisare vult. Et fuit move en le common Bank 35 Eliz. en le dit case de H. B. q le dit bre sur examination poit estre endorce, & amende, Sed non allocatur: Et judicium, ut supra. Et issint fuit prie en 32 H. 8. mes la Curia advisare vult.

Mich. xxxiv & xxxv Eliz.

In Bank le Roy.

Le Countess de Rutland's Case.

EN Dette sur Obligation de 500 l. port per le Countesse de Rutland; Le Defendant plead al issue, & fuit trie pur le Plaintiff. Et oze en arrest de Judgment fuit monstre, que un Robert Moor fuit retourn sur le Venire facias, & issint nosme en le distress, mes en le pannel devant les Justices de Nisi prius per misprision il fuit nosme Robert (a) Mawre, & issint sur le Postea; Sur que fuit dit, que estranger q ne fuit retourn, fuit jure, & done vdict: pur ql cause Judgmt ne serra done. Mes fuit resolve per tout le Court, que si potuit p le examination appear q son droit

(a) 1 Rol. 197. 8 Co. 162. b. Moor 762. 1 Rol. Rep. 200. 2 Rol. Rep. 168, 483.

(a) 8 Co. 162. b. Moor 762. 1 Rol. Rep. 200. 2 Rol. Rep. 168, 483. Apres 43. a. 1 Rol. 197.

Cr. El. 57, 222. 32 H. 8. cap. 30. 18 El. c. 14. 21 Jac. cap. 13. Cr. Jac. 457, 458. Cr. Car. 278. 1 Rol. 404.

droit nosme est Robert Moor, issint que il est bien nosme en le pannel sur le (a) Venire facias, & auxy que il est mesme le home que fuit retorn, & fuit jure, la le postea serra amende. Et a cest purpose vide 9 E. 4. 14. per Danby, & 19 H. 6. 39. tit. Amendment Br. 37. 27 H. 6. 5. per queux liures appiert, que si un soit bien retourn en le pannel de Venire facias, & misnosme en le Distringas, ou Habeas Corpora, que ceo ne fuit amendable, mes le proces vers le Jurors fuit discontinue: Mes a cest jour apres verdict, Judgment ne sert pur ceo stape, car touts discontinuances sont remedy per lestatutes de 32 H. 8. & 18 Eliz. Mes a cest jour, si un juror soit misnosme en le pannel del Venire facias, coment que il soit bien nosme en tout le proces subsequent, ne poit estre amend & issint fuit adjudge Mich. 35 & 36 Eliz. en Bank le Roy en Cowels Case. Et puis le viscount fuit examine, & sur son examination appiert, que le voyer nosme del Juror fuit Robert Moor, & que mesme cestuy Robert Moor, que fuit retorn, appiert, & done son verdict, & sur ceo pur le reason avantdit, le record del postea fuit amend per lopinion de tout le Court, s. Popham Chief Justice, Clench, Gawdy & Fenner.

Mich. xxxv & xxxvi Eliz.

In Bank le Roy.

Codwel's Case.

1 Rol. 197, 198. Cr. El. 319. Goldsb. 184, 185. Moor 762. Cr. Jac. 457, 458. Cr. Car. 203. Palm. 103, 104.

IN Appeal de Mayhem enter John Codwel Pl', & Thomas Parker Def. les parties discend al issue, & le Jury trove pur le Pl'; Et ore fuit move en arrest de Judgment, que fuit variance enter le pannel de Venire facias, & le Distringas, & Postea, en le nosme dun del Jury, que appiert & done verdict; Car en le pannel del Venire facias il fuit nosme Palus Cheal, & en le Distringas, & le Postea

Postea, il fuit nosme Paulus Cheal; & p̄ c̄ q̄ le nosme del Juror fuit (a) misnosme en le Venire facias, & principalment en son (b) Christien nosme, a cest cause Judgment fuit arrest. Mes sil ust estre bien nosme en le panel sur le Venire facias, & misnosme sur le Distringas, ou en le Postea, la ceo sur examination serra amend.

(a) 1 Rol. 197, 198. 1 Jones 448, 449. Cr. Car. 32, 203, 563. Cr. El. 57, 222, 258, 866. Cr. Jac. 28, 116, 353, 354, 396, 457, 458, 653, 654. 1 Rol. Rep. 374, 375. Hutt. 81. 3 Bulstr. 179, 180. Hob. 328. 1 Leon. 278. Owen 61, 62. 1 Sid. 66. 1 Keb. 182. (b) Cr. El. 256.

Mich. xxxvii & xxxviii Eliz.

In Bank le Roy.

Nichol's Case.

Chamberlain port Dette vers Nichols sur single Bill; Le Def. plead payment sans acquittance: sur que fuet al issue, & trove pur le Plaintiff. Et coment que payment sans acquittance nest plea, & issue est joyn sur chose nient material; Car si le Defendant ad pay le summ sans acquittance, uncore le single Bill remain en force: Mes entant q̄ la fuit un issue joyn sur un affirmative & negative, & q̄ lissue est trove pur le Pl', ceo fuit expressement aid per le statutes de 32 H. 8. & 18 Eliz. & sur ceo le Pl' ad Judgment. Sur quel Judgm̄t un brief de Error fuit port sur le novel (a) Statute; Et la sur bon consideration le Judgment fuit affirm, quod nota.

Jenk. Cent. 257. Cr. El. 157, 455, 697, 716, 884. 1 Brownlow 225, 229, 232. Moor 12, 692. Dyer 6. pl. 3. 1 Rol. 243. pl. 4. Cr. Car. 25, 78. Cr. Jac. 86, 377, 435, 447. Noy 85, 86. Latch 158. 1 Jones 140, 141. Hob. 68, 69, 113. 1 Keb. 5. pl. 13. Winch 76. Hutt. 54. 3 Bulstr. 301, 302. O. Benl. 127. Hard. 2, 3, 40. Lane 81. Stiles 198.

(a) 27 El. c. 8.

Mich.

Mich. xxxviii & xxxix Eliz.

Bohun's Case.

Amendment des Fines.

(a) Devant 39. a.

EN 32 H. 8. Gray & Eliz. sa feme esteant seisie en droit del dit Eliz. del Manor de Empoles en Westhall en Suff. en mesme last levy fine de ceo al Nicholas Bohun Armig. & ses heirs, per le nosme del Manor de Empoles, & de grand nomber des acres de terre, pree, &c. solonque le common form des fines; & le manor & tenements fuer value al 20 marks per annum, issint que le fine en le hamper fuit 26 s. 8 d. que fuit indorce sur le brief de covenant; & touts foits le fine pro licentia concordandi, (que est (a) appell' le Silver le Roygne, ou le post-fine) est le fine en le hamper & demy del dit fine pluis; Come en cest case, le fine en le hamper fuit 26 s. 8 d. & demy ceo est 13 s. 4 d. en tout amountant a 40 s. & uncore le Clerk fist entry del silver le Roygne en cest form; Nicholas Bohun Armig. dat Dominæ Reginæ 40 s. pro licentia concordandi, &c. in placito conventionis de tants des acres de terre, pree, &c. intertessant le Manor, & pursuant les auters parols; Et pur cest misprision Aldham, que fuit cozin & heir al dit feme, port brief de Error en Bank le Roy, & le transcript del fine certifie; Et Error assign inter auters in le dit point, eo que le silver le Roygne ne fuit pay cibien pur le Manor, come pur les tenements. Et apres ceo, les Judges del Common Bank fuer move damender cest fine en open Court, & pur ceo que appiert a eux sur examination, & sur view de touts les parts del fine, que ceo fuit forsque misprision del Clerk, que enter le Silver le Roygne, & que le dit summ de 40 s. en verity fuit le fine, cibien pur le Manor, come pur le residue; Et touts foits le value enter sur le dorce del brief de Covenant, est le garr pur le entry de Silver le Roygne, & coment que le transcript del fine fuit remove per brief de Error, uncore entant que le

corps

corps del record remain ove eux; Ils resolve unemt, q le dit entrie serra amend, & serra fait en brief de Conventione del manor avantdit, & des touts des acres, &c. come doit estre. Et puis sur diminution alledge en lomission del dit manor, en lentrie del silver le Roign, bre fuit direct a cest purpose al Seignior Anderson, que un jour cest Term mova touts les Justices de Serjeants Inn in Fleetstreet, de scaver lour opinions concernant le dit amendment en cest case, pendant le dit bre de Error. Et fuit resolve per Popham Chief Justice de Angliterre, Periam Chief Baron, Clark, Walmesley, Fenner, Owen & Ewyns, que le dit entry del silver le Roign serra amend, & ceo pendant le bre derror. Auxy ou le bre de Covenant serroit, Teste meipso, le brief fuit, Dede meipso, que fuit insensible & vitious; Et ceo fuit auxy amend per touts lour opinions. Nota Lecteur, ceux presidents & resolutions des Justices ensuants en autiel cases, fueront mise a les dits Justices, devants q ils resolvant del principal case. ¶ In Essex Dowlings Case, &c. Fine levy Hill 6 E. 6. certifie brief derror Michaelis 24 & 25 Eliz. Reginæ, & certificate per bre de Certiorari Paschæ 26 Eliz. & Trinitatis 26 Eliz. ex assensu omnium Justiciar de Regio Banco, & Cōmuni Banco, & Baron de Scaccario, pendant le bre derror, proclamations endorce super pedē finis, fuer amend, solonq les proclamations sup not finis remanent cum Cirographario, ut patet per recordū. Les Justices del Bank le Roy adonqs fueront Wray, Thomas Gawdy, Ayloffe & Clench; & les Justices del Cōmon Bank adonqs fueront Anderson, Meade, Wyndham & Peryam; & les Barons del Eschequer fueront Manwood & Shute. ¶ 2. In Kent, Kettles Case, Le retorn del bre de Covenant fuit Oct' Purific 31 H. 8. & en verity fuit ingross Trinit sequent; mes fuit enter sic, scilt, & post concess. & recordat in Crastin Sanctæ Trin, anno 30 H.8. ou serroit 32 H.8. & sur ceo bre derror fuit port; Et pendant le bre derror, les Justices de Bank le Roy, p le resolution de Wray, Gawdy, Clench, & Shute, sedente Curia, le record fuit amend in his verbis; Et postea concess. Crastino Trinit 32. Et sur ceo regula intratur in Regio Banco Termino Michaels 27 & 28 Eliz. Et appiert p le dit rule, que le Justices del Bank, cestascavoir, Anderson, Peryam, Wyndam & Rodes, a ceo assent; Et Rodes dit q fuit un bon president en 30 H.8. ubi pes finis fuit amend per le note & les proclamations, &c. ¶ 3. Morgans Case in Com Oxon; Certificatio notæ Judicis, scilt, concordia partiū fuit in his verbis; En Præcipe

Apres 39.a. 2 Sid. 93. Poph. 102.

Dowlings Case, Tr. 26 El. per touts les Justices & Barons. Godb. 103.

Kettles Case, Mich. 27 & 28 El. per touts les Justices.

Morgans Case, Hill. 38 El. per Cur. de Com. Banco.

de duabus ꝑtibus Rectoriæ, & duabus partibus teñ, & ꝑ vitium Clerici scriptoris in concordia, deforciañ recognovit partē ultimam quam, &c. Et pes finis, & nota cum Cirographar recte ingrossantur, videl't, recognovit ꝑtes quas, ut illas quas, &c. Et pendent sup hoc bře de Errore, Hill 38 El. Reginæ, emendatur certificatio Judicis ꝑ notā & pedē finis, ꝑ Curiam, devant Judgment done in Regio Banco. Et sur c̄ le Pl' en bř derror mova le Court del Cōmon Bank, q̄ entant q̄ bř derror fuit pendant, q̄ le fine serra fait in statu quo prius devant lamendmt, cōe c̄ fuit certifie devant le bř derror certifie. Et les Justices del Bank, cestascavoir, Anderson, Walmesley, Beaumount & Owen, deny le motion, & agard q̄ lamendmt estoyera, comt q̄ c̄ fuit apres le bř derror port. ¶ 4. In Suff. Downs Case, Mich. 38 & 39. Per le motion de Williams Sergeant al Ley, proclam pedis finis fuer amend ꝑ ꝑclam notæ, in his verbis: Super pedē finis proclam fuit endorce dēe fait 30 Julii, q̄ fuit aps Trinity-Term finy, & sup notā finis fuit 30 Junii, & bien, & duesmt fait. Et emendatur ꝑ Curiā aps bř derror port; Et c̄ assign ꝑ error. Et issint en le principal case le rolle del entry del argent le Roign fuit amend (bř derror pendant, & c̄ assign ꝑ error) accordant al bř de covenant, le note, le pée, & le certificate del Judge, en ceux pols (de manerio de Empoles cum ꝑtinentiis ac) quer ꝑ negligence del Clark en lentry del argent le Roign fuer omit en le rolle, & sont pleinmt extant en le bř de Covenant, note, pée, & certificate del Judge: Et ꝑ c̄ q̄ appiert q̄ lentier summe fuit pay al Roign, cibien pur le manor, come ꝑ le residue, & issint nul ꝑjudice al Roign, c̄ fuit amend, ut supra. ¶ 5 Mich. 33 & 34. inter Payn & Covert; Les records (devant amendmt) fueront in Com Sussex, & amend, & fait Kanc, come le verity fuit; Et duo alii fines Michael 33 & 34 Eliz. fueront amend, & pro Civitate Ebor, fait Ebor. ¶ 6. Sussex, Wealches Case; Cognitio Judicis, Le ville en q̄, &c. fuit estre Salehurst, cōe Vity fuit, & le bř de Covenant, note, & pée, fuerōt Calehurst; Et emendatur, & fait Salehurst ꝑ Curiam. Et notandum est, quod tales emendationes ꝑ mandatum Curiæ, intrantur in dorso Recordi per regulam Curiæ.

Downs Case, Mich. 38 & 39 Eliz. per Cur' de Communi Banco.

Payns Case, Mich. 33 & 34 Eliz. per Cur' de Communi Banco.

Wealches Case.

Paschæ

Pasch. xli Eliz.

In Bank le Roy.

Freeman's Case.

ERror per Smith vsus Freeman en recovery de wast; Le bre fuit en recital del Statute de (a) Gloucester, Quod nullus faciat vastum, venditionem, & (b) destrictionem, &c. ou serra destructionem: Et en c̄ error fuit assign, Et fuit pry q̄ cest original bre serra amend, esteant forsq̄z le misprision del Clerk, q̄ ad misprise un parol en lestat de Gloucester, sur q̄ le bre fuit foundue; Et le misprision fuit forsq̄z en un letr, cestascavoir, destrictionē p̄ (c) destructionem. Et tota Curia sur bon debate & consideratiō a 2 several temps resolve. ¶ Primerment, Que c̄ fuit matr de substance, Car Destrictio est latin pol, & alter le sence del Statute. ¶ 2. Que c̄ ne poit estre (d) amend ꝑ ascun statute, Car matr de substāce en bre original nest remedy per ascun statute, mes matter de form tantsolement.

¶ Nota bene Lecteur, Sur consideration des Statutes de (e) 14 E. 3. cap. 6. Stat. 1. 9 H. 5. cap. 4. 4 H. 6. cap. 3. 8 H. 6. cap. 12. 32 H. 8 cap. 30. & 18 Eliz. cap. 14. si bre original a cest jour fault form, ou contain faux latin, ou vary del Register en matr de form apres verdict, nul Judgment serra stay, ou reverse. Mes si fault substance, come en le case al barre, coment q̄ soit ꝑ misprision del Clerk, ceo nest remedy

Cr. El. 462. 8 Co. 163. a.
Construction de Statutes.
(a) 6 E. 1. Stat. de Glouceſt. cap. 5. 2 Inſt. 299, 300, &c.
(b) F.N.B. 55. c.
(c) 2 Bulſt. 51. Cr. El. 462.; Hutt. 56, 57.
(d) 2 Bulſt. 51. Cr. El. 462, 644.
(e) 8 Co. 157. a. 158. a.

per ascun statute. Vide 3 E.6.86. 10 E.3.482,553. 41 E.3.14. 45 E.3.6. 4 H.6.16. 7 H.6.40. 21 H.6.8. 40 Ass. pl. 26. 11 H. 6.34. 27 H.6.6. 27 H.6. Amendment 34. 28 H.6.8. 2 H.7.11. 9 H.7.16,19. 34 H.6.26. 35 H.6.10. 30 H.6.4. 8 E.4.4. 10 E. 4.12. 11 E.4.14. 22 E.4.21,47. 13 H.7.21. 14 H.7.13. Vide Mich. 3 E.6. Bendloes, les Justices de Comon Bank en bre de Partition, add parol ostensurus, (a) q̃ fuit omit; Et en bre de Apel, ils amend cest parol, (b) Ave, & fait ceo Avie.

(a) 8 Co. 160. a. 1 Ander. 24. Moor 5. Dall. 5. pl. 9. N. Benl. 33. pl. 53. O. Benl. 3. pl. 9.
(b) 8 Co. 159. b. Moor 5. 1 Anders. 24. N. Benl. 33. pl. 53. O. Benl. 3. pl. 9.

Trin. xli Eliz. Reg.

In Bank le Roy.

Gage's Case.

Jenk. Cent. 258. Co. Ent. 250. pl. 9. Noy 171. Moor 571.

IN bre de Error per Gage vs Tawier de reverser un fine levy 4 Eliz. Et assign p̃ error, q̃ le bre de Covenant port teste 24 Aprilis, retornabil' 15 Paschæ, (q̃ en veritie fuit le 15 jour de April) & issint le retorn devant le Teste. Et fuit resolve p totam Curiam, q̃ serra amend; Car fine & cõmon recovery ne sont forsq; cõmon (a) assurances ewe p mutual consent des ꝑties, & p̃ c̃ tiels impꝛisions poyent ẽe amend. Mes en aut actions, nul amendmt serra en tiel case. Et fuit dit q̃ en 18 Eliz. inter (b) Norreis & Braybrook, bre de Error fuit port de reṽser un recovery en 19 H. 8. & le Teste fuit un jour apres le retorn; Et p̃ c̃ q̃ appiert q̃ fuit mispꝛision del Clerk, en case de cõmon recovery, fuit amend. Vide 11 H. 6. 2. b.

(a) Devant 40. b. Jenk. Cent. 257. Cr. Car. 270. Poph. 23. Apres 46. a. 1 Co. 15. b.
(b) Raym. 71.

Trin

Trin. xli Eliz. Reg.

In Communi Banco.

Cook's Case.

CHallenor port Formedon vers Cook del Manor de (a) Isfield en le County de Sussex; Le tenant plede en barre cōmon recovery vers le donee in tail del dit Manor; Le Pl' plede nul tiel record, & sur ceo fuer al issue; Et le record fuit Iffield, ou p negligence del Clerk, ou p corruption per traher un stroke, & fesant un ſ. un f. s, Isfield, p Isfield; Et le Court fuit move damender ceo. Et fuit resolve, q si poit (b) appear al eux q ceo fuit le misprisiō del Clerk, ou corrupt apres, que ceo serra amend. Et a inducer le Court a ceo, le tenant mōstre q le recoveror enfeoff cesty q fuit tenant en tail p fait, q recite le recovery per nosme de Isfield, & il enfeoffa luy p mesme le nosme, & divers conveyances maintenant apres le recovery, & touts per le voyer nosme de Isfield. Et le Court agrea, q serra amend, & eo potius q fuit en common recovery, q est suffer p assent des parties p (c) assurance de teres. Et sur ceo fuit amend, & Judgment done encounter le Demandant.

(a) 2 Brownl.236. 1 Bulst.7. Noy 1.

(b) 2 Brownl.236. 1 Bulst. 7.

(c) Devant 40. b. 45.b. Jenk. Cent. 257. Poph.23. Cr. Car.270. 1 Co.15.b Noy 1.

Cases de Pardons.

Mich. xxxv & xxxvi Eliz.

In le Star-Chamber.

Franklin's Case.

1 Ander. 131, 132. 3 Inst. 234.

UN question fuit referre al consideration del Coke Sollicitor General le Roign, hors del Court del Star Chamber, inter Downing Pl' & Franklin, Eden, & auters Def. sur le general Pardon, 19 Februarii anno 35 Reginæ Eliz. & le case fuit; Que le bill de Downing fuit exhibite en le dit Court, 5 ans devant le darrein Parliament, pur Riots & Routs, &c. & quel chose fuit pardon per le dit general pardon fuit le doubt. Et ceo depend sur 2 branches del dit act, s. And also except all Penalties, Forfeitures now due, accrued, or grown, or which shall, or may be due, accrue, or grow to the Queens Majesty, by reason of any Offence, Misdemeanor or Contempt; and whereof, or for the which any Action, Bill, Plaint or Information at any time, within 8 years next before the last day of this present Session of Parliament, hath been, or shall be exhibited, commenced or sued, and shall be there the last day of this Session of Parliament depending, or remaining to be prosecuted; Et pcheín ensuant, la est auter except, s. And also except out of this general and free Pardon, all Offences, Contempts, Disorders, Covins, Frauds, Disceits and Misdemeanors, &c. whereof, or for the which, any Suit by Bill, Plaint, &c. within four years next before the last day of this Session of Parliament, is, or shall be commenced or exhibited. Et sur considera-

tion

tion de ceux deux branches, le Sollicitor Gesial ctifie; Que le fine due al Roign fuit except, & le Pl ou Lattorny le Roign, poit pceder p le fine, q est except, & q le Roign avera; car sans prosecuc, le Roign ne poit aver fine, ne le pty ses costs. Et (a) quando Lex aliquid alicui cocedit, cocedere videtur, & id, sine quo res ipsa esse non potest. Mes il ctifie q le imprisonmt, & tout corporal punishmt en le dit case fuer pdon; Car en le prim des dits 2 exceptions, loffence m nest except, mes le forfeiture, penalty & profit due al Roign: Et p c le imprisonmt, ou ascun auter corporal punishmt nest pas except, car c nest include deins ceux pols, Forfeiture, Penalty ou Profit. Mes si le bill ust ee exhibit deins le 4 ans, doqs loffence m esteant except, p consequence touts incidents, (b) ou dependants sur c, cibn corporal come pecuniary, sont except, Et p c, en tiel case riens est pdon. Le ql certificate sovent foits puis ad estre confirm p lopinion del Court de Star Chamber.

(a) 5 Co. 12. a. 115.b. 12 Co. 13, 130. Co.Lit. 56.a. 153.a. 2 Inst. 306. Cawly 246. Moor 218.

(b) 6 Co. 13. b. Latch 81. Palm. 412. Hob. 81, 82. 3 Inst. 236. Cr. Jac. 207. Hard. 370. Apres 51.a.b. Jenk. Cent. 258. Moor 394, 599. Yelv. 126 1 Brownlow 211. Plow. 401.a. Cr. El. 72.

Hill. xxxix Eliz.

In le Star Chamber.

Gilbert Littleton's Case.

INter Gilbert Littleton Armig Pl, & le Sur Dudley & auters Defendats en le Star Chamber, le case fuit tiel; Al darrein Parliamt q comence le 19 jour de Februarii, anno 35 Eliz. en le general pardon est tiel exception; And also excepted out of this General Pardon all Offences, &c. whereof, or for the which, any Suit by Bill, &c. at any time within four years

3 Inst. 234. Hard. 370.

years next before the last day or this present Parliament, is, or shall be commenced or exhibited in the Court of Star Chamber, and now is, or the last day of this Session of Parliament shall be there depending; Le bill fuit exhibite p Gilbert Littleton Term Hill devant le Parliamt, & proces agard retornable Term Paschæ procheín ensuant, q fuit apres le Parliamt. Et si cest sute serra dit dependant devant le retorn del proces, fuit le qstion. Et primerment, Fuit object q les parols del exceptio sont sute p bill depending, & ne poit ee dit sute, tanqz le proces soit retorn. 2. Fuit observe, q en procheín preceeding exception concernant sutes comence deins 8 ans, la le conclusio est, depending or remaining to be prosecuted; Qur parols or remaining to be prosecuted, come fuit dit, extend al bills nemy dependants, s. qnt le proces nest pas retorn, mes nuls tiels pols sont en cest exception. Et a prover q le bill ne fuit dependant devant le proces retorn, le counsel del Def. resemble c aux briefs al comon ley, ou diverse liures fueront cite, a prover q original briefs ne sert en ley pendant (a) devant lour retorns, 21 E. 4. 55. a. brief est attamined cy tost come c est enseal, mes il nest pendant tanqz soit retorn, (b) 18 H. 8. 5. a. acc. Mes fuit rnde & resolve, q fuit grand diversity inter original brief purchase hors del Chancery, & retornable en le Comon Bank, ou en Bank le Roy, Car la entant q loriginal vient hors dun auf Court, le Comon Bank, ou Bank le Roy, nad ascun record devant le retorn de c: Mes en le case al barre, le bill est exhibit en le Star Chamber, & proces issuit hors de m le Court, & est retornable en m le Court; & p c le sute per bill serra dit dependant devant le retorn, ou serving del Subpœna. Et fuit dit, q sute p bill depend, & bill dependant, sont tout un, Car le bill est origo rei ut caput sectæ, & res denominatur a principaliori parte; Et Lattorny General dit, que ou un original brief est purchase hors del Chancery, retornable en le Comon Bank, ou en Bank le Roy, en tiel case apres que le brief serra retorn, le brief serra dit pendant del jour del (c) Teste de ceo, Et si le tenant alien devant le retorn, & apres le Teste, ceo serra dit alienation pendant le brief; ou si le Def. purchase auter brief devant le retorn del primer brief, ceo serra dit purchase pendant le primer brief. Et est dit en 9 H. 6. fol. 54. que ou un brief de Covenant (d) est purchase a levier fine, & devant le retorn, Dedimus potestatem recite, Cum breve nostrum de Conventione pendeat, & uncore le brief de Covenant adonques nest retorn,

(a) 2 Inst. 329. Cr. El. 261. Hob. 224. Hutt. 4. 10 E. 4. 19. a. 2 Sid. 94. Apres 48. b. 7 Co. 30. a. 3 Keb. 172. 9 H. 6. 51. b. 54. b.

(b) Cr. El. 677. Br. estrepment 1.

Nota bien de cest case

(c) 2 Sid. 94. 9 H. 6. 54. b.

(d) Cr. El. 677. Cr. Jac. 11. 3 Cr. 677.

retorn, & issint est le comon experience a cē jour. Vide 2 E. 4. 11. b. Si (a) Quare impedit soit deliṽ al viscount en le Court del Comon Bank dee execute, c̄ est appendant a cē purpose, q̄ le Pl' poit aṽ Prohibition p̄ suit p̄ m̄ le cause en Court Christian; & home poit purchase son bṽ original, & a m̄ le temps un bṽ (b) Destrepemt. Aury les parols del exception fuer̄ observe, s. Whereof any Suit by Bill is, or shall be commenced, &c. and shall be depending the last day of this Parliament. En quer cest pol (is) est dee entenṽ dependant 19 Febr. q̄ fuit le primer jour del Parliamt. Mes (shall be commenced) coviēt ee de necessity aps le dit 19 jour de Febr. q̄ est touts foits hors del Term. Et p̄ c̄ appiert q̄ les reasons del Act entend, q̄ le mitter eins dun bill solemt en le Star Chamber aps le dit 19 jour de Febr. & devant le dit darrein jour, serra dit pendant, Et issint appiert q̄ les dits parols en le pceding branch, s. depending or remaining to be prosecuted, sont en effect tout un. Per q̄ fuit conclude q̄ en le case al barre, le bill serra en voyer entendmt del dit exceptiō, dee dit (c) dependant. Et issint fuit resolve p les Justices sur conference ewe ent eux; Et sur c̄, sentence en le Star Chamber (d) procēd vers les Def. en le dit bill.

(a) Br. prohibition 10 Hutt. 4. F. N. B. 43. I. Fitz. prohibition 7.

(b) 19 H. 8. 5. a. 18 H. 8. 5. a. Br. estrepmt 1. F. N. B. 61. d. e. 2 Inst. 328, 329.

(c) Apres 48. b.

(d) 2 Rol. Rep. 485

Paschæ xlii Eliz.

In Cur' Cameræ Stellatæ.

Drywood's Case.

Drywood fuit Pl' vs Appleton & auters Def. en le Star Chamber p̄ Riots & Routs, & auks Misdemeanors: Quel Bill fuit comence devant le darrein genal pardon en anno 39 Eliz. & devant le dit pardon le Pl' morust. Et puis Lattorny del Roign inform p̄ m̄ les offences vs les Def. & pursue

3 Inst. 234.

Hard. 368.

pursue sur le primer suit; Et ore grand question fuit move, si les dits offences fueront pdon ou nemy, per le dit genal pdon. Et est ascavoier, q le dit bill fuit comence 4 ans & pluis devant le darrein jour del dit Parliamt, & deins le 8 ans. Et le doubt fuit conceive sur ceux pols del exception del dit pardon, s. And now is, or the last day of this Session of Parliament shall be there depending or remaining to be prosecuted. Et fuit dit, q coment q cest suit ne fuit depending, p c q le Pl q psue p le Roign (car chescũ suit en le Star Chamber est p (a) le Roign, & el poit c pardon) fuit * mort, uncore fuit dit q ceux parols (or remaining to be prosecuted) covient dav construction en cases quant nul suit est depending, & uncore poit ee prosecute, & c est quant le Pl mourust, ou ne voit pursue, donqs Lattorny le Roign poit prosecuter p le Roign. Mes fuit resolve per les 2 Chief Justices, & Chief Baron, q les dits offences fueront pardon, car ceux pols, or remaining to be prosecuted, coviet ee construe to be prosecuted by the Party. Et les dits parols, or remaining to be prosecuted, sont add p ouster un scruple q ascuns conceive, q un bill ne serra dit depending, tanqz le proces soit retorn, coment q en Judgmt del Ley, le bill en tiel case est dit destre (b) depending.

(a) Apres 50. b. 51.a. 2 Bulst. 182. 2 Inst. 238. * Hard. 398.

(b) Devant 48.a.

Mich.

Mich. xxxix & xl Eliz.

In Bank le Roy.

Vaughan's Case.

IN bre Derror int Hall & Vaughan, in bre de entrie in le quibus port in Gales: Le Defendant plead non disseisivit, & pend cest plea, le general pardon in anno 35 Eliz. fuit fait, p q touts fines, amerciaments, contempts, &c. fuer pardon, &c. apres diverse continuances, lissue fuit trove p le demandant, & judgment done, sed non in mia, quia (a) pardonat. Et le principal error q fuit assign, fuit p c q le Def. duist aver estre amercy, p c q le general pardon ne discharge lamerciament. Car fuit dit q, le tort ou le disseisin, ne fuit le cause del amerciament, mes le delay del Pl. Car si les Defendants veign le (b) primer jour, & render al demandant, ils ne sert amercy, come 14 E.3. amerciament 16. 22 E.3.1 & 2.8 R.2. tit. amerciament 26. & divers auters livres sont agrea: Et un case fuit cite en le Comon Bank in Mich. 15 & 16 Eliz. ou pcipe fuit port vers (c) infant, & pend le plea, il vient de plein age, fuit adjudge q il serra amercy p le delay, come fuit urge apres son plein age: Issint in le case al barr, intant q la fuit delay cibien apres come devant le pardon, & lamerciament fuit entirement p le delay a cest cause le pardon ne discharge c; Mes le Court resolve que le judgment sert affirm: Et in cest case ceux points fuer resolve, ¶ 1. Que loriginal cause del amerciament in le case al barre fuit le tort & contempt del ten, q il ne render le tre al demandant, sicome il fuit command p le bre le Roy: Et coment q lamerciament ne poit estre impose, ne le Roign intitle a c devant le judgment (pur c q p le judgment le tort est discern) & coment que

Jenk. Cent. 258. Moor 394.

(a) Lane 71.

(b) 8 Co. 61. b. Cr. El. 65. 2 Sand. 227. Co. Lit. 126. b. Cr. Car. 564. Plowd. 42. b. 1 Rol. 212.

(c) 1 Rol. 215. Co. Lit. 126. b. 127. a. Moor 394.

Le resolution del Court.

(a) 1 Brownl.211. Yelv.126. Devant 47. a. 6 Co. 13. b. Latch 81. Palmer 412. 3 Inst. 236. Hob.81,82.Hardr. 370. Co.Lit.126.b. Moor 394,599.Cr. Jac.207. Cr.El.72. Jenk. Cent.258.
(b) Cr. El. 72. 37 H.6 21.
(c) Latch 22, 82, 141. Godb. 88. 6 Co. 79.b. Apres 50.a.Kelw.198.a.b.
(d) 2 Bulstr. 54. 3 Keb. 405.
(e) 27 H. 8. c.26. 2 Bulst.54.2 Sand. 40. Plowd. 126.b. Vaugh. 396.
(f) Co.Lit. 126 b. 8 Co.61.b. 2 Sand.227. Cr.El.65. 1 Rol.212. Cr.Car.564. Plowd.42.b.

que le pdon vient devãt le judgmt, unc le (a) original cause del amerciamt esteant pdon, lamerciamt m p cõsequence est p. don; cõe in Coles Case in Plow. Com f.401.a. & en Quatermoines Case in 37 (b) H.8.f.21. ou est agrée, q̃ un general pdon doit ẽe prise pluis (c) beneficialmt p le subject, & pluis fort vs le Roy. ¶ 2 Fuit resolve, q̃ touts statutes de Jeofails extẽd al (d) Gales car lestatute de 27 (e) H. 8. ad fait c pcel Dengliterre, & puis judgmt fuit affirm. Nota, cẽy q̃ fait tort, & al (f) prim cõfesse c, & obey le mandmt le Roy p s bt, ne sert amercy. Car prudenter facit, qui præcepto legis obtemperat. Mes chescun q̃ fait tort, & esteant cõmand p le bt le Roy, quod juste & sine dilatione reddat, &c. & il injustmt maintain le tort de record in le Court, & ove grand delay cohert le demandant a record c p le course del ley, peccatum peccato addit, qui culpæ quam fecit, patrocinia defensionis adjungit; & ideo sert amercy.

Hill. xli Eliz. Reg.

In Leschequer.

Wyrral's Case.

3 Inst. 234.

Hill 40 Eliz. Rot. 188. le case fuit tiel: Thomas Wyrrel & Jesper Bosvile suer lie al Henry Thwaytes in un recognizance in nature dun Statute Staple 15 Febr, anno 35 Eliz. de 500l. & puis le dit Thwaites fuit utlage in le County de York 8 die Octob. anno 38 Eliz. & puis le general pardon al darrein Parliamt in 39 Eliz. fuit fait. Et si cest debt fuit pardon, ou nemy, fuit le question oze in m term in Leschequer. Et c consist sur 2 exceptions in le dit pardon, s. And also except out of this Pardon all Debts, which were, or be due, to our Sovereign Lady the Queen, &c. or to an

any to her use, by any Condemnation, Recognisance, Obligation or otherwise, &c. And also except out of this Pardon, all Goods, Chattels, Debts, Actions and Suits already forfeited, &c. by reason of any Outlary, and whereof her Majesty by her Highness Letters Patents hath before the last day of this present Session, made any Grant, Covenant or Promise to any person or persons. Et fuit resolve que per le darrein exception est prove, que le intention del Roign ne fuit de includer (a) dets, queux accrue a luy per utlagary deins le primer exception, Car est special saving, & in special manner pur eux per le darrein exception. Auxy le general pardon est destre prise pluis (b) beneficialment pur le Subject, & pluis fort vers le Roign.

(a) Lit. Rep. 87. Swinb. 303. (b) Devant 49. b. Kelw. 198. a. b. 6 Co. 79. b. Latch. 22, 82, 141. Godb. 288.

Trin. xli Eliz. Reg.

In Bank le Roy.

Biggen's Case.

IN Appeal inter Shugborough & Biggens, Le Defendant fuit trove culp de Manslaughter, & le question fuit, si le Roigne poit pardon le arser del main. Et fuit object, que lappeal est le suit del party, & ore per le statute de 4 H. 7. cap. 13. le arser del maine est parcel del punishment; Come si fuit enact, q̃ cestuy q̃ fuit attaint in appeal de Mayhem, avera Judgment de mort, in cest case si un fuit attaint in appeal de Mayhem, le Roign ne puit pardon lexecution del mort, eo que est le punishment del offence al suit del pty. Mes sur conference eue ove diverse auters Justices fuit resolve, que le Roy poit (a) pardon le arser del main in appeal, & ceo pur deux reasons. ¶ 1. Appiert per le dit statute de (b) 4 H. 7. q̃ al common ley home q̃ avoit un foits eue le benefit de son (c) Clergy, aver ceo auxfoits, & issint in infinitum, que

Moor 571. Cr. El. 632, 682. 3 Inst. 114.

(a) Dyer 261. pl. 26. Raym. 370. Hob. 294. Moor 571. 3 Inst. 237. Cr. El. 465, 632, 682.

(b) 4 H. 7. c. 13. Raym. 370. Stanf. Cor. 124. c. Hob. 294.

(c) Stanf. Coron. 124. c.

(a) Raym. 370. Hob. 294.
(b) Raym. 370. Hob. 294.
(c) Dyer 201, 202. pl. 67, 68. Cr. El. 682. 3 Inst. 237.
(d) Cr. El. 465. Dyer 261. pl. 26.
(e) 2 Inst. 200.
(f) Moor 571. Cr. El. 682.
(g) Devant 48. b. Apres 51. a. 2 Inst. 238.
(h) Moor 571.
(i) Raym. 370. Cr. Jac. 430, 431. 6 Co. 68. b. 2 Rol. 222. Hob. 294. 5 Co. 110. a. b.
(k) Fitz. imprisonment 28. Br. Corone 53. Br. Charter de pardon 21.

que fuit remidy p le dit act; issint q̃ le arser del main ne fuit a auť purpose, mes a (a) notifier al Judge, le ql il ad eiwe son Clergy devant, ou nemy. ¶ 2. Le arser del main nest ascun (b) parcel de Judgm̃t, car donques le Roigne ne poit ceo pardon, pc̃ q̃ le Pl' ad interest in le Judgm̃t, & pur cest cause le case del mayhem, q̃ fuit mise del auter part, fuit bien agrée: Et issint le doubt in Ellen Lambs Case, 3 Eliz. 201. (c) & 202. & in Musgraves Case, 9 Eliz. Dyer (d) 261. bien explain. Mes la est dit, q̃ le Roigne ne poit pardon impriſonm̃t, car ceo est parcel del execution del Pl' in lappeal: Et Taverners Case, 15 Eliz. Dyer (e) 323. fuit bien agrée per touts, q̃ le Roigne poit pardon le corporal punishment in case de (f) forgery, pur ceo que touts suits in le Starchamber sont forsq̃ informatiõs pur (g) le Roigne, coment q̃ le suit soit exhibite p le party, & le Roigne poit pardon ascun offence, pur que ascun subject complain la. Mes si Taverner ust estre attaint al common ley in action de (h) forger de faux faits, la le Roigne ne poit aver ceo pardon. ¶ 2. Fuit object q̃ coment q̃ le Roigne poet pardon le arser del main, uncore le Defendant poit estre imprison al suit del party: Car devant lestatute de (i) 18 Eliz. cap. 7. le Roy poit in case del inditem̃t del manslaughter, pardon le impriſonm̃t, come appiert (k) 15 H. 7. 9. a. mes nemy in appeal. Et p lestatute de 18 Eliz. ils ne poient deliver le prisoner (l) devant que il soit arse in le maine. Mes fuit resolve, q̃ intant q̃ fuit purview per le dit act de 18 Eliz. que apres Clergy allowe, & arser in le maine, le prisoner serr̃ maintenant enlarge & deliver hors del prison: quel act fuit resolve de extender cibien al case dappeal, come al case de inditement, & le Roigne ore ad pardon le arser del maine, a cest cause le arser del maine esteant discharge, le party auxy serr̃ discharge de son impriſonm̃t p bon construction de m̃ lact: auterm̃t le party serr̃ loyalm̃t discharge de son punishment, & uncore remaine in perpetual prison, q̃ ne unques fuit lentention des feasors del act. Et sur ceo Biggens fuit discharge.

Trin.

Trin. ii Jac. Reg.

In Communi Banco.

Hall's Case.

ALice Cook libell' vers Rowland Hall in Court Christian pur defamation, pur appelle luy feme puteine; & ad sentence, & costs fuer̄ taxe. Et decretum fuit quod prædictus Rowlandus Hall foret movendus & citandus, ad solvend' expens. citra tale festum. Quel sentence le Defendant appeal, & devant le dit feast, Hall obtain pardon le Roy, & sur ceo obtein prohibition hors del Common Bank. Et in cest case 4 points fuer̄ resolve. ¶ 1. In touts cases dependants inter party & party en Court Christian, ou le suit est tantsolem̄t (a) pro salute animæ, vel reformatione morum, come p̄ defamation, ou injecter violent mains sur un Clerk, ou semblables; la le (b) ꝑdon del Roy est barr̄ del suit: Car le suit nest a recov̄ ascū damag̃, ou ascū aut̄ chose, mes solement a inflicter punishm̄t sur le offendor ꝓ salute animæ, quel punishm̄t le Roy poit pardon cibien devant, come apres le suit cōmence, car in verity tiels suits sont solem̄t p̄ le (c) Roy, coment q̄ ils sont ꝓsecute ꝑ le pty, & semblable al suits in le (d) Starchamber p̄ferre ꝑ ascū subject v̄s auter, le Roy poet eux pardon; car com̄t que un subject ꝓsecute eux, uncore les suits sont p̄ le Roy, & a punisher les Defendāts p̄ lour offences & misdemeanors ꝑ imprisonm̄t & fine, &c. al Roy: Mes si un libel pur dismes, ou contract de matrimony, ou pur legacy, ou similia, lou le Plaintiff ad interest & property in le chose in demand, & sentence serra done pur luy pur le chose dont il libel, la le Roy ne poit pardon ceo neq; devant neq; apres le suit commence.

(a) 4 Co. 20. a. Latch. 81. Dav. 73. a. Hob. 82.
(b) Dav. 73. a. Hob. 82.
(c) 2 Bulstr. 182. Cr. Jac. 335.
(d) Devant 48. b. 50. b. 2 Inst. 238. 2 Bulstr. 182. Cr. Jac. 335.

commence. ¶ 2. Fuit resolve, q̃ touts proceedings in le Ecclesiastical Court ex officio, sont p̃ le (a) Roy; p̃ quel cause quecunq; le suit est, la le Roy poit eux pardon: Car eux sont solemt a correcter ou punisher le party pur loffence, ou delict, q̃ le Roy poit pardon, & nemy pur le pticular interest del pty. ¶ 3. Fuit resolve, q̃ in le principal case, comt q̃ le suit soit pur le Roy, & le quel le Roy poit pardon; uncore quant sentence (b) est done, & costs taxe pur le Plaintiff, ore le Plaintiff ad particular interest in eux p̃ le sentence, queux le Roy ne poit pardon, comt q̃ jour soit done pur payment de eux, ut supra. Mesme la ley de suits avantdits in Starchamber apres sentence done, & costs taxe pur le party, le pardon ne dischargera eux. Mes si le (c) pardon avoit estre obtein devant sentence, la le pardon ad discharge tout: Car donques le Court ne puit aver proceed al ascun sentence del principal, & per consequence nemy de costs, que sont forsq; accessary. ¶ 4. Coment que le Defendant ad (d) appeal, pur q̃ le sentence a dits purposes (per lopinion des Doctors del ley spirituel) est suspend, come appiert en (e) 27 H. 6. tit. Gard 118. 2 R. 2. tit. Quare impedit 143. 1 H. 7. 12. 2 Mar. (f) 105. Uncore per le primer sentence, le party (nient obstant lappeal) ad interest in les costs, q̃ ne poient estre discharge per le pardon le Roy: Et pur ceo quant a cest purpose, le primer sentence nest suspend per le appeal. Et puis Consultation fuit grant pur les costs.

(a) Cr. Eliz. 684. Hob. 82. Dav. 73. a.

(b) 3 Inst. 238. Cr. Car. 9, 47, 199. Cr. Jac. 159, 335. Noy 91.

(c) 2 Bulstr. 182. Cr. Car. 68. Cr. Jac. 335.

(d) 6 Co. 18. b. Palm. 412. 3 Bulstr. 73. 1 Rol. Rep. 226. 2 Jones 67. 3 Keb. 282. Cr. El. 460.

(e) Cr. El. 460.

(f) Dyer 105. pl. 17.

Mich.

Mich. xxix & xxx Eliz.

In Leschequer.

Page's Case.

INformation vers Page & sa feme de Intrusion in certein meases in Lyn Regis in le County de Norff. Sur demurrer le case fuit tiel. Indy seisie des dits meases in fee, tenus in socage, per son volunt in escript devisa eux a sa feme (ore la feme de Page, que fuit alien nee) & devant le mort de Indy, le Roigne per ses Letters Patents desouth le grand Seal fait la dit feme denizen, & puis Indy morust, & les dits Letters Patents desouth le grand Seal fuer corrupt, & rase in le teste, issint que ore come fuit rase & corrupt, ils port teste apres le mort del Indy; Et sur ceo Page & sa feme obtein exemplification del inrolment de les Letters Patents in le Chancery desouth le grand Seal, que fuit ove le voyer teste accord al verity. Et puis un office fuit trove devant certein Commissioners, per force dun Commission a eux desouth Lexchequer Seal direct, per q̃ fuit trove que la dit feme fuit alien nee, &c. Et in cest case ceux points fuer resolve per Sir Roger Manwood Chief Baron & tout le Court del Exchequer. ¶ 1. Que le office fuit insufficient & void p̃ diũs causes. 1. Pur c̃ q̃ office trove p force dun Commission desouth Lexchequer Seal, nest sufficiẽt a intitler le Roigñ al terres del alien nee: Car la sont deux manners de (a) offices; lun q̃ vest lestate & possession de tre, &c. in le Roigñ, ou el navoit forsq; droit ou title devãt, & c̃ est appell' office de Entituling: Cõe in case de purchase p aliẽ ou villein le Roy, ou p ascũ corps corporat ou politiq; in Mortmain, ou p person attaint de felony, & sic de similibus, & tiel offic̃ que concern fee ou (b) franktenemt coviẽt estr̃ p force dun comission

(a) Hob. 231. Cr. Car. 173. 1 Jones 217. Godb. 312, 325. 2 Rol. Rep. 322, 342. Lane 43. 1 Bulstr. 34. 10 Co. 115. a.

(b) Hob. 231. Cr. Car. 173. Apres 56. b.

sion desouth le grand Seal Dengleterre: Est auter office, & ceo est appell' office de (a) instructiõ, & c̃ est q̃nt lestate del terre, &c. est loyalm̃t en le Roy devãt, mes le ꝑticularity del terre, &c. nappiert de record, issint q̃ c̃ poet estre mise in charge. Come si un soit (b) attaint de haut treason, touts ses t̃res, &c. sont maintenant ꝑ lestatute de 33 H. 8. c. 20. in le Roy: ou si tenant le Roy cõmit felony, est attaint, & morust, in ceux & autiels cases lestate del t̃re sans ascun office est en le Roy. Mes nappiert al Court del Exchequer, de q̃ux terres le ꝑson attaint fuit seisie al temps de son attainder, ou puis, & si c̃ soit trove ꝑ office ꝑ force dun Commission desouth Leschequer Seal, c̃ est un sufficient record a instructer le Roy del certainty del terre, &c. ꝑ q̃ c̃ poet est̃ mise in charge. ¶ 2. Fuit resolve, q̃ (c) loffice fuit insufficient ꝑ c̃ q̃ nappiert, q̃l authority les Commissioners avoient, mes generalm̃t, Inquisitio capta, &c. coram, &c. virtute cujusdam Commissionis eis direct', & ꝑ divers auters grosse imperfections loffice fuit adjudge insufficient. ¶ 3. Fuit resolve, q̃ in le case del alien, (d) ꝑson attaint cy longe come il vive, villein le Roy, alienation in mortmain, condition infreint, alienation contra formam collationis, & semblables; le inheritance ou franktenenĩt del ter̃ nest vest in le Roign̄ tanq̃ (e) office trove desouth le grand Seal: Car c̃ est office de intituling. Vide 35 E. 3. villenage 22. 8 E. 4. 4. 9 H. 7. 2. Mortmain, 2 H. 7. 8. Condition. 29 H. 8. tit. Char̃ de Pardon B. 59. tenant le Roy attaint de felony, 7 E. 4. 29. & 11 H. 4. 26. si alien̄ & subject n̄e purchase ter̃ a eux & lour h̃rs, ils sont joynt, & joynet en Assise, & tanq̃ offic trove survivor tiend̄ lieu; Plow. Com. Nichols Case, f. 477. & 11 Eliz. Dyer 283. alien (f) nee. Vide Stanf. Prærog. Reg. c. 18. f. 53. ¶ 4. Et le grãd question del case fuit, si le Defendãts pleader le dit exemplification del inrolm̃t des dits Letters Patents de denization ꝑ force del statute de 3 E. 6. c. 4. ou 13 Eliz. c. 6. Et fuit object, q̃ neq̃ (g) exẽplificatiõ, neq̃ cõstat dascũ Letters Patẽts fuer̃ pleadable al cõmon ley: car cõe appiert ꝑ les ꝑambles des ambideux lestatutes, q̃ cest case de denization fuit hors des pols des ambideux lestatutes, car les pols des ꝑview del statut̃ de 3 E. (h) 6. sont; All and every person or persons, Bodies politique or corporate, which lawfully shall or may claim by force of any Patent, made since 4 *Feb. anno* 27 *H. 8. &c.* And all other that now have or hereafter shall have any good or lawful Estate, Right, Title, Rent, Profit, &c. of, in, to or out of any Lands, Tenements, Hereditaments or Offices, under any such Patentee or Patentees, &c. shall and may, &c. make and convey to themselves Title, &c. unto the said

(a) Godb. 312. Moor 293.
(b) 1 Co. 42. a.
(c) 1 Rol. Rep. 395 Cr. Car. 461. Doct. placit. 79.
(d) Moor 325. Co. Lit. 2. b. Hob. 231. 2 Anders. 33.
(e) 1 Jones 78, 79. Moor 325.
(f) Dyer 283. pl. 31. 1 Leon. 47. Goldsb. 29, 102. 2 Sid. 148. Moor 390.
(g) Hardr. 118. Co. Lit. 225. b.
(h) 2 Inst. 282.

ſaid Honors, Lands, Tenements, Offices, and other the Premiſſes, &c. by, from or under the ſaid Patentees, or any of them, &c. by ſhewing forth of any exemplification or conſtat of the Roll, &c. Et in le caſe al bark, la feme ne claim aſcun eſtate, right, title, &c. de, ou, in aſcun terres, tenemts, &c. p force daſcun Letters Patents, mes ſolement deſtre fait denizen, q̃ extend ſolement al ability & capacity de ſon perſon, & nemy al aſcuns terres, tenemts, ne aſcun choſe iſſuant hors de eux. Et fuit object, q̃ ceſt caſe fuit hors del Statute de 13 Eliz. c. 6. car le letter de ceo eſt, That all and every Patentee and Patentees, their Heirs, Succeſſors, Executors, and Aſſigns, and all and every other perſon and perſons, having by or from them, or any of them, or under their title, any eſtate or intereſt, of, in, or to any Lands, Tenements, Hereditaments, or other thing whatſoever, to ſuch Patentee or Patentees heretofore granted, &c. Per q̃ appiert p̃ le reaſon avandit, q̃ ceſtuy q̃ claim deſtre fait denizen, eſt hors de ceux parols. Auxy leſtatute intende tiel hereditamt, ou choſe ſolemt, q̃ poit eſtre aſſigne, ou trāſferre ouſter, q̃ appiert p les dits pols, And all and every perſon and perſons, having by or from them, &c. any eſtate, &c. of, in, or to any Lands, &c. to ſuch Patentee, &c. granted. Mes qnt le Roigne p ſes Letters Patents fait un denizen, ceo eſt undividual & incident inſeparable al perſon de ceſtuy q̃ eſt fait denizen, q̃ ne poit eſtre transferre ouſter, & p̃ ceo ceſt caſe eſt hors del dit act. Mes a c̃ fuit rnde, & reſolve per le Court. ❡ 1. Que voyer fuit, q̃ neq; un exemplification, neq; un conſtat fuit pleadable, & dẽe mſe al Court al common ley, p̃ c̃ q̃ ils ne fueront forſq; de le tenor del inrolment, & le tenor dun record neſt pas per la ley pleadable. Et ove ceo accord les preambles des ambideux le ſtatutes, & le ſtatute de 6 R. 2. c. 4. ❡ 2. Fuit reſolve, q̃ le dit act de 13 Eliz. extende a les dits Letters Patents de denization: Car fuit grand queſtion conceive ſur le dit act de 3 E. 6. le quel le Patentee m̃ poit pleader le exemplification, ou conſtat del inrolmt de ſes Letters Patents demeſne, per reaſon del dits parols in le corps del act, ſhall and may, &c. make and convey to themſelves title, &c. unto the ſaid Honors, Lands, Tenements, &c. by, from, or under the ſaid Patentees, &c. iſſint que per le letter del act, les Patentees m̃ fuet lapſe al common ley. Vide Dyer 1 Eliz. 167. Sir Thomas Wrothes Caſe, pur remedy de que le dit act de 13 Eliz. fuit fait, que eſt pluis liberal & beneficial, que le dit act de 3 E. 6. car ceo per expreſſe parols extend a touts Patents quecunq;, ſans aſcun reſtraint: Car fuit reſolve, que ceux

2 Inſt. 282.

Co. Lit. 225. b. Hardr. 118. Palm. 62.

Doctrin. placit. 213. 2 Bulſtr. 34.

Dyer 167. pl. 13.

Co. Lit. 225. b.

ceux pols, all and every Patentee and Patentees, their Heirs, Successors, Executors and Assigns, est un distinct clause de soy m̃, & extend a touts Letters Patẽts quecunqȝ ou cõcernãt tres, &c. ou ꝑsons, &c. ou ascũ chose, ou matter quecunqȝ: Car in le ꝓchein clause, les pols sont, any Lands, Tenements, or Hereditaments, or any thing whatsoever. Et puis versus finem; as shall and may serve to and for such title, claim or matter: Et ꝑ c̃, cest act extend al Letters Patẽts de creatiõs des (a) Dukes, Marquesses, Coũtees, Viscoũts, Barõs: Auxy al ꝑdons des treasons, felonies, &c. outlaries, infranchisemts des villeins, & touts auts Letters Patẽts, q̃ al temps del exemplification ou constat sont in force, nient loyalmt surrender ou cancell', concernãt ascũ inheritãce, frankteneme̅t, ou chattels, ou ascũ aut chose, ou matter real, ꝑsonal, ou mixt quecunqȝ. Vide lopinion de Mervin in 32 (b) H. 8. tit. Patents Br. q̃ un cõstat fuit pleadable al cõmon ley, mes nẽy Inspeximus; Et lopiniõ de (c) Fisher 12 H. 7. 12. b. & vide Lib. Intrationũ, aid grant sur pleder dun constat. Mes ꝑ cest resolution, vous mieux intend le ley in ceux cases. Nota bon Lecteurs, intãt q̃ les dits acts de 3 E. 6. & 13 Eliz. extendont a fait un exemplification ou constat de inrolmt des Letters Patẽts pleadable, est requisite a mke a vous le diũsity inter un exemplification & un constat, & le signification auxy de ceux pols ꝑ q̃ux Letters Patẽts sont communemt nosme Inspeximus, Innotescimus, & Vidimus. Et est ascavoir, q̃ un Exẽplificatiõ, & un Inspeximus, cõe un Innotescimus, & un Vidimus, sont tout un. Un Inspeximus, ou Exẽplificatiõ cõmẽce in tiel form: Eliz. Dei grac̃, &c. omnibus, &c. (e) Inspeximus irrotulamt quarũdã Lrarũ Paten̄, &c. & recite eux de verbo in verbũ, & conclude in tiel form; Nos autẽ tenorẽ Lrarũ Paten̄ ꝑd', &c. ad requisitionẽ A. B. duximus exẽplificand' ꝑ præsentes, In cujus rei testimonium, &c. & est appell' un Inspeximus, ꝑ c̃ q̃ t comence aꝑs le stile de le Roign̄, ove cest pol, Inspeximus: & est appell' exẽplification a re ipsa, ꝑ c̃ q̃ le record est ꝑ c̃ exemplifie, come appiert ꝑ le fine de ceo, s. duximus exemplificand' ꝑ ꝑsentes. Et un constat aꝑs le stile le Roigne commence; Constat nobis ꝑ inspectionẽ Rot Cancellariæ nr̃æ, quod Dominus Hen̄ nuper Rex Angliæ octavus, Pater nr̃e præcharissimus, Literas suas Paten̄ fieri fecit in hæc verba: Henricus Dei gratia, &c. & recite touts les Lrs Patents de verbo in verbũ; & conclude: Nos autẽ ꝑ eo qd' Lr̃æ Patentes ꝑd' sunt causaliter amissæ, sicut A. B. nobis in Cancellaria nostra personaliter constitut sacrm ꝑstitit corporale, & qd' ipse Lr̃as ꝑd', si eas imposterum reperire cõtigerit, nobis in Cancellariã nr̃am ꝑd' restituerit, cancelland',

(a) Doctrin. placit. 213.

(b) Palm. 87. Br. Patents 97. Br. N. C. 192.

(c) Palm. 62. Br. Patent 58.

(d) Co. Lit. 225. b.

(a) 8 Co. 8. a.

cancelland', tenorem irrotulament prædict' ad requisitionem J. S. duximus exemplificand' p præsentes. In cujus, &c. Et est appell' un Constat, pur ceo que apres le stile le Roigne, ceo commence ove cest parol, Constat. Et est destre observe, que per nul de eux riens est exemplifie forsque le tenor del record. Auxy p ceo appiert, q home ne poet aver un constat sans affidavit, come p le form del constat appiert. Mes un Inspeximus poit estre obtein sans affidavit. Un Innotescimus seu Vidimus sont tout un, & sont touts foits dun Chre de feoffment, ou ascun auter instrumt, q nest pas de record; & le Innotescimus cõmence in tiel form. Regina, &c. omnibus, &c. Inspeximus quoddam script fact' p A. B. Radulpho D. sigill ipsius A. sigill (ut dic) in hæc verba: Sciant præsentes, &c. & recite le Instrument de verbo in verbum. Et hoc omnibus quorum interest aut interesse poterit in pmissis, Innotescimus p præsentes. In cujus rei, &c. Et est appell' Innotescimus per reason de cest pol Innotescimus, in le fine de ceo. Et ascun foits commence, Vidimus quoddam scriptum, &c. & donques est appell' Vidimus. Pur le antiquity dun Inspeximus, ou exemplification in le form que ore est use, jeo ay lie en les Chronicles del Monastery de S. Martin de Battail, q le Roy Henry le 1. invent le dit form. Car ceux sont les parols del Chronicle: Contigit unam ex cartis Willi fundatoris de Bello vetustate dissolvi, unde Odo Abbas a Rege Henr petiit, ut sigillo suo remunita renover: Rex assentit. Ac ubi in cartis antiquis, posterior solet mentionem facere prioris in hujusmod' verbis: Sicut Charta talis Regis vel hominis testat; Rex Henricus, ne clausula illa rescriberet, sed aliam antea inusitat, ipse dictavit hoc modo: Quoniam Inspeximus Chartam Willi, &c. (recitans totam priorem cartam.) Et inclitus Rex reddidit hanc rationem facti sui. Si enim inquit, clausula, quæ suppressa est, minime inserta fuisset, carta posterior sive prior modicum conferret, nunc vero, nulla de præcedente facta mentione, hæc Charta sola sufficit, etiam si omnes alii deperiissent, quoniam ego ipse, quæ in persona vidi, testifico.

3 Inst. 173.

Co. Lit' 225. b.

Mich.

Mich. xxx & xxxi Eliz.

In Communi Banco.

Knights's Case.

1 Anderſ. 173, 174 175, &c. 3 Leon. 124, 125, 126, &c. Moor 199, 200, 201, &c. Cr. El. 855 Goldsb. 15, 16, 17, 18, 19, 20, 21, &c.

IN Action de Treſpaſs inter Knight & Breech, le caſe fuit: Le Prior de S. Johns de Jeruſalem, anno 29 H. 8. fiſt leaſe per fait Indent, ove le conſent de ſon Covent deſouth lour common ſeal, de divers meaſes en Clerkenwel en le County de Middleſex, pur ans uncore endurant, rend le annuel rent de 5 l. 10 s. 11 d. al 4 feaſts del an, uſual in le City de Londres, s. pur un meaſe 3 l. 11 d. pur auter meaſe 20 s. & pur les auters meaſes ſeveral rents, reſidue del dit rent de 5 l. 10 s. 11 d. ove condition, que ſi le dit rent de 5 l. 10 s. 11 d. ſoit arrere en part, ou en tout, al aſcun del dit feaſts, que donques le dit Prior, & ſes ſucceſſors reentr. Et puis le dit Priory, & touts les poſſeſſions de ceo, vient al Roy H. 8. per ſurrender del dit Prior & Covent, & per leſtatute de 31 H. 8. quel Roy anno Regni ſui 36. per ſes Letters Patents deſouth ſon grand ſeal, grant un des meaſes (pur q̃l 20 s. de rent fuit per le dit demiſe reſerve) al leſſæ, & a un auter en fee, & puis le leſſæ morust. Et puis trove fuit p Inquiſition in le County de Middleſex, anno 26 Eliz. per force dun Commiſſion deſouth Lexchequer Seal, que 37 s. 5 d. parcel del dit rent de 5 l. 10 s. 11 d. reſerve per le dit demiſe pur le reſidue, fuit arrere al feaſt de Saint Michael donques pur un quarter del an donques darrein paſſe. Et que le dit feaſt de St. Michael fuit un des uſual feaſts de payment in Londres, & que apres le Roigne devant le commiſſion returne, & devãt aſcun entre, ou ſeiſure pur luy, p ſes Letters Patents deſouth le grand Seal grant le reſidue

des

des meases al un en fee, q̃ fist lease al dit Knight le Pl'; sur q̃ Breech le Def. lassignee del executor del primer lessee enter, vers q̃ Knight le Pl' port action de Trespas. Et cest notable case fuit sovent foits argue al barre en le Common Bank, & puis overtmt per les Justices a deux several jours, & p̃ c̃ q̃ le Court fuit devide en opinion, cest case fuit argue en Lexchequer Chamber devant touts les Justices Dengliterre. Et apres argumt al barre, & sur divs conferences ewe enter les Justices al Serjeants Inn, fuit adjudge pur le Pl'. Et en cest case ceux points fueront resolve. ¶ 1. Que ceo fuit un entier lease, & consist sur 6 Unities, 1. Le demise est fait p un pol de demise. 2. Al un lessee. 3. Daver un commencemt. 4. Un term de ans. 5. Un determination de ceo. 6. Un reservation de rent en grosse adeprimes, & le (vidl't) apres ne fait sevance de ceo, come cest case est, mes est potius un several declaration de several values de chescun parcel, p q̃ appiert comt, & pur queux rates (a) lentier rent de 5 l. 10 s. 11 d. est reserve. Mes fuit resolve, q̃ sur un demise sevral annuel rents p apt parols poient estre reserve, car le reservation del rent nest del substance del lease, car lease poit consister sans ascũ reservation, ou p̃ part, ou p̃ tout. Et p̃ c̃ si home fait lease a B. des Manors de Dale, Sale & Down, a aver & tener a luy les dits Manors pur 21 ans, rendant annuelment hors del Manor de Dale 10 l. en cest case le Manor de Dale est solement charge ove le dit rent, & les Manors de Sale & Down, ne sont pas charge ove ceo; Et en cest case cest rent est incident al revsion del Manor de Dale solement: Et si en cest case le lessor grant ouster le revsion del Manor de Sale & Down, uncore tout le rent de 10 l. remain ove le lessor, & le lessor ou son lessee ne poit distrein p̃ cest rent en les Manors de Sale & Down; Et en m̃ le case le lessor puit aver reserve rent de 10 l. hors del Manor de Dale durant 5 ans, & 10 l. hors del Manor de Sale durant 10 ans, & 16 l. hors del Manor de Down, a commencer 10 ans puis, & lun sur condition precedent, auter sur condition subsequent, & le tierce absolute, & destre pay a several jours & lieux, en queux cases sans question les rents sont several, & pur le rent de lun, le lessor ne poit distrein en ascun des auters; Et surrender de lun Manor, ne extinctera les rents pur les auters. Et ove ceo accord 14 Eliz. in Winters (b) Case 308 & 309. per trois Justices, & 17 E. 3. 75. b. & 17 Ass. pl. 10 & 9 E. 3. 12. Et tiel construction accord aux ove le voier intention des parties, que touts foits est destre observe, quant ceo per reasonable

(a) 3 Bulstr. 256. Hob. 172. Ley 77. 2 Rol. 448. Apres 55. b.

(b) Moor 98, 205. 1 Anders. 174. Cr. El. 341. 3 Leon. 124. Goldsb. 16, 19. Hob. 172. 2 Rol. 448. Cr. Car. 154. 2 Bulstr. 281, 282. Dyer 308, 309. pl. 75.

ſonable conſtruction poit conſiſt ove rule & reaſon del ley. Vide 29 Aſſ.p.52. 29 E.3.39. 18 Eliz. Dyer 350. 5 Aſſ.p.6. 7 Aſſ.p.1. 15 Aſſ.p.11. Mes en le caſe al barre, fuit reſolve, q̃ le rent fuit (a) entier, p̃ c̄ q̃ primerm̃t le leſſor reſerve lannuel rent (en le ſinguler number) de 5 l. 10 s. 11 d. & puis quant le leſſor vient a ſon condition p̃ paym̃t del dit rent, le condition eſt auxy en le ſingular number, s. ſi le dit rent de 5 l. 10 s. 11 d. ſoit arrere en part, ou en tout, iſſint q̃ c̄ accord ove les parols del Indenture (q̃ux import lentention des ꝑties) q̃ en ceſt caſe ſerra un entier rent, & ſi ſerra ſeỽal rents, donq̃s queſtion poit eſtre fait del validity del condition, q̃ extend al dit rent, &c. en le ſingular number, Sed (b) benignæ faciendæ ſunt interpretationes cartarum propter ſimplicitatem laicorum, ut res (c) magis valeat quam pereat; Et ꝑ ceſt cõſtruction touts les ꝑts del Indenture ſont en bon accord ove eux m̃, & ove la ley auxy. Et le diỽſity enter ceſt caſe & le dit caſe de (d) Winter eſt, p̃ c̄ q̃ la, les reſervations ſont ſeỽal, & icy (ſur consideration de tout lendenture) entier, quod nota bene. ¶ 2. Fuit reſolve, q̃ admittant q̃ avoient eſtre ſeveral rents, uncore entant q̃ le condition fuit entier, donant un entier reentry en tout pur default de paym̃t daſcun part ꝑ le ſeverance del aſcũ part del reỽſion, (ſi fuit en caſe dun common ꝑſon) (e) tout le condition ſerra deſtroy. Et ove c̄ accord le Judgm̃t en le dit caſe de Winter 14 Eliz. Dyer 308, 309. ¶ 3. Le grand doubt fuit, le quel c̄ eſteant en le caſe le Roy, ſi le condition per le ſeverance del part del reverſion ſoit deſtroy ou ſerra apportion; Et 1. fuit object q̃ le leaſe en le caſe al barre fuit fait per common perſons, & le reverſion de ceo fuit veſte en le Roy per lour ſurrender, & per lact de 31 H. 8. en quel caſe le Roy ne poit prender c̄ en auter manner, q̃ le ſubject avoit devant; Car le Parliament que done ceo al Roy, liera le Roy cybien come le ſubject, & ſon prerogative ne ſerr̄ extende a faire (f) tort ou injury al aſcun ſubject, come eſt tenus en 13 E.4.8.a. 19 H.6. tit. Quinzim̃ Br. 5 E.3.6. 17 E.3.40. Stanf. 543. Plowd. Com. Nichols Caſe 246. 2. Fuit object, q̃ ſi le condic̄ en ceſt caſe ſerra divide, la ley & nature del choſe ſerr̄ alter ꝑ le grant le Roy, & c̄ ne poit il faire, car il ne alter̄, ne change la ley, ou cuſtom del t̃re ꝑ ſon patent, vide 11 H. (g) 4. 73. 37 H.8. Patents Br. 100. &c. 3. Si le condition ſerra devide, il ſerra 2 conditions del un, & p̃ c̄ le leſſée ſerr̄ ſubject a deux, & p̃ le non paym̃t del rent al un, lauter reentra & pluſors abſurdities ſur ceo enſuer̄, queux touts ſerr̄ avoid, ſi ſolonq̃ le

(a) 3 Bulſtr. 256. Hob. 172. Ley 77. 2 Rol. 448. Moor 52, 98.

(b) Co. Lit. 36. a. 183. b. 301. b. 2 Bulſtr. 282.

(c) 1 Co. 76. a. 2 Co. 72. b. 5 Co. 8. a. 8 Co. 95. b. 3 Keb. 288. Mod. Rep. 109. 2 Jones 69.

(d) Devant 55. a. Dyer 308, 309. Moor 98.

(e) 1 Rol. 472. Co. Lit. 215. a. 4 Co. 120. a. Styl. 316, 317.

(f) 1 Co. 44. b. 52. b. 11 Co. 72. a. 2 Inſt. 681. Co. Lit. 19. b. 13 E. 4. 8. a. Plowden 246. b. 487. b. Cr. Argument 60. 1 Rol. Rep. 167. Noy 182. Moor 416. Godb. 317. 7 Co. 12. b. Dav. 75. a. b.

(g) 11 H. 4. 37. b.

le rule del ley le condition ne serra divide. Mes sur grand deli-
beration, Et les Justices del Common Bank ayant dixs con-
ferences ove Wray Chief Justice Denglet̄re, Manwood Chief
Baron del Exchequer, & touts les auters Justices; Al darrein
sur mature considerac̄ fuit resolve, q̄ le Patentée (a) de pcel ne
prendr̄ advantage del condic̄: Mes quant a cest part del terre
demise, c̄ fuit tout oustermt discharge del condition. Mes fuit
auxy resolve, q̄ quant al residue le condition (b) remain ove
le revsion q̄ le Roy ad, & issint nul p̄judice a asc̄ party, ne tort
fait al ascun p le prerogative le Roy, ne le Roy p son grant ne
alter la ley, Car la ley fait divsitie enter les grants le Roy, q̄
touts foits est presume dentẽder, ardua Regni pro bono publico
omnium, &c. & les grants des subjects q̄ux poient entend lour
private besoignes, car les grants del subject touts foits soyent
prise pluis fort vers eux. Mes les grants le Roy sont prise &
interpret ove un benigne & beneficial interpretation, issint que
nul prejudice accrescera a luy per construction ou implication
sur son grant plus que il voierment entend per ceo; Et pur c̄
si le Roy grant terr̄ a J. S. & ses heirs, & en vitie J. S. est villein
le Roy, ceo ne (c) infranchiser̄ le villein per implication. Mes-
me la ley dun (d) Alien née 17 E. 3. 39. (e) Advowson del Pro-
vandrie tenus del Roy fuit alien a un Abbot & ses successors, &
le Roy grant al Abbot & ses successors, que Labbot & ses suc-
cessors teigner̄ le provandrie en ppre oeps, uncore il seisera lad-
vowson pur lalienation en Mortmain, & destroier̄ lappropriation,
car il ne serra ouste de son droit al advowson per implication.
Et en 2 R. 3. 4. 21 E. 4. 46. & 34 H. 6. si 2 (f) sont endette al
Roy, & le Roy release al un c̄ ne dischargera lauter. Et en 6 H. 7.
15. & 11 H. 7. 10. si le Roy release touts (g) demands, droit
dinheritance ne serr̄ release. 21 H. 7. 7. le Roy grant terres en fée,
sur condic̄ q̄ il ne (h) aliena, c̄ est bon. Mes en tout ceux cases
autermt est en le case dun common person; Et en plusors ca-
ses le Roy que claim per un subject serr̄ en meliour case, en re-
spect del dignitie & p̄rogative incident p la ley al royal pson le
Roy, q̄ le subject mesm̄ p q̄ il claim: Come si le Roy ad rent
seck p attainder de treason, ou p grant (i) il distreinera pur c̄,
non solement en la terre charge, mes en touts ses aut̄s terres,
& uncore le subject per que il claim ne distreinera pur ceo. Si
subject ad un (k) Recognizance ou Obligac̄, & puis est utlage,
ou attaint, le Roy seisera tout le terr̄ del conusor, ou obligor,
ou il mesm̄ poit aver forsque le (l) moitie: Issint en le case al bar
le Roy prendra advantage del condition sans (m) demand,

(a) 2 Bulst. 281. Stiles 316. Co. Lit. 215. a. 1 Rol. 472.
(b) 1 Rol. 472. Co. Lit. 215. a.
(c) Plowd. 502. Goldsb. 20. 2 Sid. 81.
(d) 3 Leon. 243. Plowd. 502. b.
(e) 7 Co. 14. b.
(f) 3 Leon. 243. 2 Sid. 82. 1 H. 7. 13. a. Br. Charter de Pardon 36. 2 Inst. 239.
(g) Co. Lit. 291. b.
(h) Lit. Sect. 360, 361. Co. Lit. 223. a. 3 Leon. 126, 127. Moor 204. Golds. 19, 22. 4 Co. 3. b. 6 Co. 41. b. Hob. 170. Br. condition 82, 135. Dr. and Student 39. a. 123. a. 21 H. 6. 33. b. 8 H. 7. 10. b. 13 H. 7. 23. a. 21 H. 7. 8. a. Br. Prerogative 102. 21 E. 4. 47. a. Plowd. 77. a.
(i) 5 H. 7. 38. b. 3 Leon. 125. 13 E. 4. 6. a. 2 Inst. 131. 4 Inst. 119. Devant 4. a. Plowd. 239. a. 243. b. 343. a. Br. prerogative 68, 77. Fitz. grant 47. 44 E. 3. 45. a. Fitz. prerogative 7. Br. distress 6. 49. Goldsb. 17.
(k) 3 Leon. 125. Goldsb. 17. Plowd. 243. a.
(l) 4 Co. 73. a. Moor 210, 296. 2 H. 7. 8. b. Plowd. 243. a. Fitz. Prerogative 10. Br. Prerogative 101. Br. Condition 125. Br. Entry congeable 88.
(m) Cr. Jac. 513.

S &

& uncore le Prior mesm desouth que le Roy claim, ne poit re-
enter pur default de paymt del rent sans demand fait. Et si
le Roy purchase Seigniorie, de q̃ terre fuit tenus p posteritie,
le Roy serra de meliour condition q̃ le subject de q̃ il claim, &
F. N. B. 142. f. avera le prioritie: Et issint avera son grantee auxy en tiel case,
cõe est tenus en 24 E. 3. f. 65. Fitz. tit. Gard 27. 47. ¶ 4. Fuit
resolve q̃ comt q̃ fuit 37 s. 5 d. que fuit trove destre arrere al
Mich. fuit pluis q̃ fuit due al ascun quarter del an, uncore c̃
Hard. 15. Lane 41, 42, suffist pur le Roy, q̃nt loffice ad matter & substance, car le sole
& substantial point q̃ pve le infreinder del condic̃, est le non pay-
ment del rent, ou ascun pt de ceo, & nest material quant del
rent fuit arrere, car si ascun pt fuit arrere, suffist, & le pty q̃ tra-
verse ne doit traverser q̃ le dit sum de 37 s. 5 d. fuit arrere,
mes q̃ le dit sum de 37 s. 5 d. ou ascun part de c̃ fuit arrere, &
chescun office esteant le trover des layes gents, que ad matter &
substance, serra p le Roy, comt q̃ le manner de c̃ ne soit cy for-
mal come poit estre. Et p ceo si fuit trove, q̃ le rent pur un en-
tier quarter fuit arrere, & en verity forsq̃ part de c̃ fuit arrere,
c̃ sufficer pur le Roy, auxy que le Jurors en Midd poient trov
queux fuer les usual Feasts en Londres esteant auter Countie.
1 Anders. 177. ¶ 5. Fuit resolve q̃ comt q̃ sans office le lease ne fuit void, pur
c̃ q̃ un clause de re-entrie est solemt reserve, cõe appiert devant,
& nul limitation q̃ pur non paymt, lease ser void, & comt q̃ lof-
Cr. Car. 100, 173. Moor 296. fice ne fuit retorn devant le date del Patent, uncore entant q̃
loffice fuit trove devant le grant & puis c̃ fuit retorn de record,
le grant fuit bon, & q̃ en cest case de re-entre p loffice sans sei-
sure, le lease fuit void. ¶ 6. Fuit resolve, comt q̃ le commis-
sion fuit desouth Lexchequer Seal, uncore entant q̃ p c̃ un chat-
Cr. El. 855. Cr. Car. 173. 10 Co. 115. a. Devant 52. a. tel, s. un lease pur ans serra void, cest inquisition trove p force
de c̃ fuit assets bon, comt que le commission ne fuit desouth le
grand Seal. Et sic nota diversitie inter cest case, & le case de
Page devant. Et puis le Plaintiff accordant a ceux resolutions
avoit Judgment de recover.

Hill. xxxii Eliz.

In Bank le Roy. En brief de Error.

Specot's Case.

HUmfrey Specot ađ & Eliz. sa fem. Pasc. 28 Eliz. port Quare impedit vers Levesq; de Exon; Et counta q̃ John Arscot fuit seisie del Manor de Tedcote en le County de Devoñ, a q̃ ladvowson del Esglise de Tedcote fuit appendant en fee, & t̃ teyn̄ en Socage, Et issint seisie 1 Jan. 4 & 5 P. & M. p son volunt escript, devise le dit Manor ove l'appurtenances, a q̃, &c. al dit Eliz. p̃ term de sa vie, & morust p q̃ le dit Eliz. enter en le dit Manor, & fuit ent seisie p̃ term de sa vie, & puis a Baron le dit Humfrey, & ils p̃sent al dit Esgl' adonq̃s esteant avoid David Walter, q̃ fuit admitte, institute & induct en temps de (a) peace, &c. & puis Lesglise devient void p le mort del dit David Walter, & uncore est void, & issint appient al Pl' a p̃senter, & q̃ Levesq; eux a tort disturb, &c. Levesq; plede q̃ Lesglise fuit infra diocess. suam, quodque ipse nihil habet, nec hēre clamat in Ecclesia illa, &c. nisi admissioñ, institutioñ, & inductioñ p̃sonarum, &c. & que le dit Esglise est beneficium cum cura animarum, & q̃ le dit David Walter 24 Novemb. 27. morust, & quod Ecclesia p̃dict' vacavit, ipso Ep̃o adtunc ejusdē Ecclesiæ ordinario existen. Et ulterius idem Ep̃us dicit, quod p̃dict' Humfrid' infra sex menses, proxim̄ post mortē p̃dict' David, apud civitatē Exoniæ, in Com̄ ejusdem civitatis, præsentavit eidem Ep̃o tunc Ordinar̄ Ecclesiæ p̃dict' quendam Johannem Holmes ut clericum suum, ad Ecclesiam p̃dictā sic vacantem, eundem Episcopum requiren̄, quod ipse eundem Johannem Holmes admittere ipsumq; in eadem Ecclesia instituere, induci facere dignaretur: Sup quo idem Ep̃us ut Ecclesiæ p̃d' Ordinarius, apud, &c. p̃dict' John̄ Holmes sic p̃sentar̄ de habilitate & idonietate sua in hac parte, secundum leges ecclesiasticas examinavit, ut de jure debuit; Et super hujusmodi examinatio-

3 Leon. 198, 199. &c. Goldsb. 35, 36, &c. 52. 1 Anders. 189, 190. | Jenk. Cent. 258, 259.

(a) Doct. pla. 291.

nem ſuã, idem Ep̃us adtunc & ibm̃ invenit p̃fat̃ Johẽm Holmes fore ſciſmaticũ inveteratũ, ac eundem Johẽm Holmes ea occaſione per legem ſacreſanctæ Eccleſiæ fore pſonã inhabilẽ, & minime idoneã, ad acceptandũ aliqd' beneficiũ cum cura animarũ, p qd' idem Ep̃us ut Eccleſiæ illius ordinarius adtunc & ibm̃ recuſavit admittere p̃dictũ Johẽm Holmes ad Eccleſiam p̃dictam, & plede q̃ il del cauſe de refuſer avantdit dona notice al dit Humfrey, &c. ſur q̃ les dits Plaintiffs demurr̃ en ley. Et fuit adjudge en le common bank, q̃ le plea Leveſq; fuit inſufficient, p̃ q̃ il mr̃e gen̄almẽt q̃ il fuit (a) Sciſmatic̃ inveteratus. Et ſur ceſt Judgm̃t br̃e de Error fuit port en Bank le Roy p le dit Eveſq;: Et 2 Errors fuer̃ aſſigne deins le record. 1. Pur ceo q̃ nul preſentm̃t fuit alledge en le deviſor, mes ſolem̃t en le deviſees pur vie; mes non allocatur, car (b) p̃ſentmẽt del leſſee eſt ſufficient title pur luy meſm̃ ſans queſtion (c) 8 H. 5. f. 10. 2 Error fuit aſſigne, q̃ le Court erre en ley, en donant judgment vers Leveſq; p̃ inſufficiency de ſon plea, ou ſon plea fuit ſufficient. Et fuit object per le counſel del Eveſq;, q̃ Leveſq; ne beſoigne a mõſtre aſcun pticuler ſchiſm, car ſil mr̃e c̃, le Court ne poit ou decider ou examiner ceo, eo que eſt choſe ſpirituel, & ne giſt en lour conuſans, come eſt tenus 27 H. 8. 14. a.b. q̃ pur appeller un (d) heretiq;, nul action giſt en nr̃e ley, car ceux del cõmon ley ne poyent diſcuſſer quid ſit hereſie. Et en 15 H. 7. 7 & 8. a. eſt agree per touts les Juſtices, que Leveſque en examination eſt Judge, & nemy miniſter, & pur c̃ le ley done foy & credit a ſon Judgm̃t. Et fuit dit q̃ eſt bon cauſe a remover un (e) Coroner de ſon office generalm̃t, p̃ c̃ q̃ il eſt minus idoneus ad officium illud exequend', come appiert per le Regiſter, & Fitzh. Nat. Brev. 163. Mes fuit rñde & reſolve, que le plea del Eveſq; fuit inſufficient. Primerment eſt declare p leſtatute de (f) Articulis ſuper cartas cap. 13. Que idonietate præſentat̃ ad beneficium pertinet examinatio ad Judicem Eccleſiaſticum, &c. ut ppter defect' ſcientiæ & aliarum cauſarum rationabilium: Iſſint q̃ appiert q̃ covient eſtre reaſonable cauſe, & cauſa vaga & incerta non eſt rationabilis; car eſt communemẽt dit, Quod doloſus verſatur in univerſalibus; Et p le reaſon q̃ ad eſtre fait, q̃ le gen̄al allegatiõ del Pl' ſerr̃ bon en le caſe al bar, eſt bon p̃ c q̃ Leveſq; en examination eſt Judge, per meſme le reaſon poit eſtre maintein, q̃ il poit refuſer aſcun Clerk, pur ceo que non eſt idoneus generalment, ou p̃ c̃ q̃ il eſt (g) criminoſus generalment; Mes coment q̃ il eſt Judge en examination, uncore entant q̃ les pceedings del Eveſq; ne ſõt de (h) record, le cauſe del refuſ̃ eſt

(a) Doct. pla. 60. 1 Rol. Rep. 136, 237, 238. 2 Bulſt. 139, 329. 3 Leon. 200. 1 Anderſ. 190. Cr. El. 242. Hob. 296.

(b) Doct. placit. 301. Apres 97. b. 6 Co. 57. b. 2 Rol. 378, 379. Cr. El. 518. Moor 456. 2 Anderſ. 49, 50. F. N. B. 33. h. 1 Leon. 230.

(c) 8 H. 5. 4. b. Fitz. quare impedit 201.

(d) 2 Inſt. 631. 4 Co. 17. a. 20. a. Hob. 296. Br. Action ſur le caſe 2.

(e) 8 Co. 41. b. F. N. B. 163. n. Apres 58. b.

(f) Goldsb. 36. Dyer 293. pl. 3. 2 Inſt. 631. de articulis cleri cap. 13. 2 Co. 34. a. 3 Co. 81. a. 2 Bulſt. 226. 1 Rol. Rep. 157. Moor 321.

(g) 2 Sid. 97. 1 Rol. Rep. 192, 237

(h) Doct. pla. 351.

est (a) traversable, & si soit traverse, & le ptie refuse soit en vie, (a) Doct. pla. 351.
c serra trie p le Metropolitan, & sil soit mort, c serra trie per (b) pays. Et si tiel general allegation des evesqs sert admitte (b) 2 Inst. 632.
(a q le Pson na varns, pur ceo q Levesq en son examination est Judge, le cause esteant spuel, come ad estre object) Patrons susteiner grand prejudice en ceux jours en lour psentations. En 38 E. 3. f. 2. (c) Levesq plaintiff mre pur cause de refusel, q le psentee ad conus luy mesme destre pjure, &c. & issint criminosus; per que appiert q dalledger que il est criminosus generalment, nest bon, car nul certain issue poit estre prise sur ceo; Et dubitatur la si Evesq ne doit dire in facto que il soit perjure, & nemy que ad confess luy mesme perjure. & 5 R. 2. tit. Trial 54. fuit agree bon ley, Que si un miscreant, ou scismatiq, soit present, admit, & induct, ceo est bon cause de deprivation. Issint sil soit irreligious, il poit estre refuse, come est dit en 5 H. 7 f. 6. Mes quant il est charge ove lun, ou refuse pur lauter, ceo covient estre alledge en particuler, issint que a ceo le partie poit respond a ceo. Et fuit observe, que appiert en nostre liures, que le cause de refusal covient estre certein, come en 5 H. 7. f. 19. & 11 H. 7. 7. & 37. que le presentee est un Bastard (d) villein, deins age, ou illiterate, &c. En 15 H. 7. que le Pson ad estre (e) excommenge per 40 jours, & pur ceo son psentee nest destre admit; ou que le presentee ad commit homicide, come est tenus en 38 E. 3. f. 2. Ou que le presentee est utlage, car donqs il nest idonea persona, ou un que est mere laicus. Mich. 12 & 13 Eliz. (f) Dyer 532. Vide Dyer 8 & 9 Eliz. (g) f. 254. Levesq de Norwich refuse un, pur ceo q il fuit haunter des Taverns, & player al unlawful Games, ob qd' & diversa alia crimina, il fuit criminosus, & non idoneus; Et fuit adjudge q le particuler causes ne fueront sufficient, car ils ne fuer mala in se, mes (h) mala prohibita. Et quod ob diversa alia crimina, il fuit criminosus, & non idoneus, sont trope general & incertain, come 40 E. 3. f. 6. en tender dun mariage, & refusal, le heir doit alledge un certain cause de refuser, dont issue poit estre prise. Et fuit resolve, que touts tiels que sont (i) sufficient causes a depriver un Incumbent, sont sufficient a refuser un presentee. Et coment que nappent al Court le Roign a determiner Schismes, ou (k) Heresies, uncore loriginal cause del suit esteant matter dont le Court le Roy ad conusans, le cause del Schisme ou Heresie, pur que le presentee est refuse, covient estre alleage en certein, al entent que le Court le Roy poit consult ove Divines a scaver si

(c) 3 Leon. 199. Goldsb. 35, 36. Fitz. Quare impedit 124. Dyer 293. pl. 3. 2 Rol. 356.

(d) 2 Rol 356.
(e) 2 Rol. 355.
(f) Dyer 293. pl. 3.
(g) Hob. 296. Goldsb. 35. Godb. 36. 2 Rol. 355. Dyer 254. pl. 2.
(h) 2 Bulst. 139 Hob. 296. 1 Rol. 355. 2 Rol. 355. 1 Leon. 106. 2 Leon. 35.
(i) 2 Rol. 355.
(k) Wing. Max. 8. 27 H. 8. 14. a. b.

(a) Devant 57. b. 8 Co. 41. b. F.N.B. 163. N.

(b) Stanf. Cor. 48. a.

(c) 1 Rol. 218.

(d) 1 Rol. 216, 218.

(e) 1 Rol. 218. 8 Co. 61. a.

(f) Jenk. Cent. 259. 1 Rol. 218.

(g) 1 Rol. 776.

si c̄ soit scisme ou nemy, & si le ptie soit mort, sur c̄ a directer le Jurie q̄ trier c̄. Et quant al case de (a) Coron̄ q̄ ad estre mise, fuit rn̄de, q̄ ne fuit destre compare al case dun presentee, car tiel general allegation nest sufficient, come est confess yambideux parties, ou a refuser un presentee, ou a depriver incumbent, pur ceo que il est persona minus idonea generalm̄t: Et le Coroner al common ley ad forsq; le gard del Rolls del pleas del Corone; Mes incūbent ad le cure & gard des alms, & pur ceo le ley require pluis circumspection & certeinty en lun case, que lauter. ¶ 2. Le Roy poit remover un Coroner p bre direct a luy, pur cause que ne serra traverse, come appiert en Fitz. Nat. Bre. 163. & issint nient semble. Donques un auter error nient assigne fuit move, s. q̄ pur le insufficiencie del plea del Evesque, le court done judgment pur le Pl': Ideo consideratum est quod pdict' H. & E. recuperēt versus pdictū Epm p̄sentationē suam ad Ecclesiam pdictā, & hēant bre John̄ Archepi Cantuar totius Angliæ primat, loci illius Metropolitano, eo quod pdict' Epus est pars, &c. Et idem Epus in misericordia. Et puis bre de inquirer del value del Esglise fuit agard; Et le value, & auters points del bre trove, & retorn; Et sur ceo judgm̄t enter arere, s. q̄ le Pl' aṽa bre al Archevesq;, ut supra, Et qd' recuperent versus pdict' Episcoū dampna, &c. Et pd' Epus in misericordia: Issint q̄ Levesq; fuit deux foits amcie, & chescun amerciam̄t del Evesq; est C. s. Et en cest case il ne duist p la ley estre (c) 2 foits amcie. Et p c̄ cest diṽsitie fuit prise; Si hōe port Trns ṽs (d) 2 & lun est trove culpabl' al damages a luy, & laut est trove culp al dam̄s a luy, en cest case chesc̄ Def. serra seṽalm̄t amercie: Et le Pl' auxy sert seṽalm̄t amercie vers chescun de eux come appiert en 47 E. 3. 20. Mes en un actiō ṽs un (e) m̄ Def. ou tenāt, & le Def. ou tenāt plede un plea al pt, & aut plea al residue, ou confess pt, & plede al issue p aut part, & les seṽal issues sont trove vers luy, uncor le Def. ou tenāt ne serra 2 foits amcie: Et ove c̄ accord 9 E. 3. 6. p Herle, & 22 H. 6. Per q̄ fuit conclude, q̄ entāt q̄ Levesq; esteant un m̄ pson soit deux foits amcie, en cest case c̄ fuit error. Encounter q̄ fuit rn̄de p un a councel ove le Def. q̄ le darrein ne fuit forsq; recital del primer, & issint a don̄ un plein judgm̄t de touts ove les damages, & nemy novel Judgment, car il ne poit aṽ 2 bres al Metropolitan, nient pluis que il poet estre (f) 2 foits amercie. Mes si fuit gratia argumenti, admit que le darrein judgment fuit erronious, uncore le (g) primer judgment est bon & pfect en luy mesme, & ne serra impeach pur ascun error en le second

second judgment car le primer judgment fuit le judgment que fuit en le Quare impedit al common ley; car devant lestatute de Westm̃ 2. cap. 5. le Pl' en Quare impedit ne recovera damages (a) & le Pl' puis le dit statute poit prender le judgment (b) al common ley, & relinquie le benefit del statute sil voit, Quod concessum fuit p totam Curiam: Per que le Councellor del Pl' pria, que le primer judgment soit affirm, & issint fuit. Nota Lector, le matter en ley fuit resolve, & adjudge p ambideux Courts.

(a) 6 Co. 51. a. Co. Lit. 17. b. 344. b. 2 Inst. 362. 3 Inst. 156. Cr. El. 162.
(b) Jenk. Cent 259.

Hill. xxxii Eliz.

In Bank le Roy.

Foster's Case.

JOhn Foster & Ursula sa feme port Action de Faux Imprisonment vers Robert Smith, & sur le pleading & special verdict le case fuit tiel; s. Que le ville de Brancaster est deins le hundred de Smithden en le Countie de Norf. Et q̃ le Def. fuit prædicto tempore quo, &c. un des Constables de Brancaster, & q̃ Nathaniel Bacon, Armig, adonqs un des Justices de Peace deins le dit Countie, fait un garrant enseal ove son Seal, direct enter auters al Constables de Brancaster, recitant q̃ John Lane de Brancaster fuit en pavour de son vie, mutilation de ses membres, & arser de ses measons p Ursula le Pl'. &c. Vobis, &c. pcipimus, quod præd' Ursulam coram aliquo Justiciariorum nrorũ ad pacem in com̃ præd' assign̄ venire faciat, seu aliquis vrm venire faciat sufficient manucapt, qd' ipsa præd' Ursula præfat' Johañi Lane dampnũ & malũ aliquod, &c. non faciat nec fieri pcurabit. Et si hoc fac recusaverit, tunc ipsã sic recusanté pxim prison nostr in com̃ pd' duci facias, &c. ibm moratur quousq; gratis hoc facere volucrit, &c. p force de q̃l garr le Def. attach le dit Ursula, & q̃ puis le Pl', & un John Hamond offer

offer eux a baer a Thom. Fermour Armig un des Justices de Peace de m le Countie, desire lye al Roign, solonques le purport del dit gart, & q le dit Robert Smith refuse de aler al dit Thom. Fermour, sur q les Pl. vaont ove dit John Hamond al dit Tho. Fermour, & la conust un recognizance al Roign, dappear al pchein Sessions dee tenus deins le Hundred de Smithden, (le ql ne fuit accord al gart) & q le Def. præd' tempore quo, &c. p force del dit gart amesne le dit Ursula devant le dit Nathaniel, devant q el refuse a trover suerty, p q le Def. amesn le dit Ursula al Goal p force del dit garrant. Et en cest case deux points fueront resolve p Wray Chief Justice, & totam Cur. ¶ 1. Que sur le dit genal garrant, s. coram aliquo Justiciar, &c. est al election del Constable ql est officer & minister de justice damesner le ptie attach a ql Justice q il voit, car est pluis reason a doner election al officer, q en psumption del ley est person indifferent, & jure a faire & executer son office duement, q a doner election a le delinquent mesm, q p psumtion del ley voile querer subterfuges & padventure voile amesner le Constable esteant pur le greinder part un poure hoe al pluis remote pt del Countie peront tiels Constables voillent estre pluis negligent & remiss de tiels garrants pur pavour de travail, & perde de lour temps; Quel judgment est encounter lopinion Fineux 21 H. 7.20. obiter, dont le Reporter fait un Quære. Mes c accord ove lopinion de Sr Brook, en abridg le case de 21 H. 7. tit Faux imprisonment 11. Nota Lecteur, le ley adjudge en le point, (q ne unqs q jeo scavoy) fuit adjudge devant. ¶ 2. Fuit resolve, q aps q le officer en le case supra, avoit port la ptie devant le Justice, & devant luy il refuse a trover suertie, si lofficer sans novel warrant ou commandment poit amesner le pty al prison & c p les pols del dit warrant, Et si hoc facere recusaverunt, &c. Et Wray Chief Justice dit, que un Justice de Peace poit en tiel case fair un gart deamasner le party devant luy mesme, & ceo serra bon & sufficient en ley: Car pluistost il que fist le gart, avoit meliour conusans del matter, & pur ceo pluis apt a fair justice en le case.

Lamb. Eir 94.

Br. Peace, &c. 9. 21.H.7.20.b, 21.a. Br. faux imprisonment 11.

Mich.

Mich xxxii & xxxiii Eliz.

In Bank le Roy.

Gooch's Case.

INter Rous Pl', & Gooch Def. come heir a son pere, en Det sur Obligation fait per le pere, en que il oblige luy mesme & ses heirs; Le Def. plede riens per discent; Et le Pl' maintein que assets al I. en le Countie de Suffolk. Et al Nisi prius devant Sir Christopher Wray, Chief Justice Dengleterre, un del councel ove le Pl' done en evidence q̄ son pere fuit seisie des terres en I. avantdit en fee, & morust ent seisie, & que eux descend al Def. per que, &c. tout q̄ fuit agree ꝑ lauter ꝑtie. Mes le councel del Def. done en evidence, q̄ longe temps devant cest action cōmence, le Def. ad enfeoff un W. G. en fee de mesme les terres q̄ fuit auxy confess. Mes le councellor del Pl' alleage & prove, q̄ cest feoffment fuit fait ꝑ fraud & covin, a defrauder le Pl' de son Action, & pur ceo void per le statute de (a) 13 Eliz. cap. 5. quant al Pl'. Mes fuit fortment urge & insist, q̄ c̄ covient estre plede & ne puit sur cest issue (de riens ꝑ discent jour del brē purchase) estre done en Evidence: Mes sur le importunitie del Councellor del Pl', Wray Chief Justice direct les Jurors a trover le special matter, & issint ils fount. Et ore mesm̄ cest Term sur argumēt al bar & Bench, deux points fueront resolve ꝑ Wray Chief Justice, & totā Curiam. ¶ 1. Que le matter avantdit poit bien estre done (b) en evidence p̄ 2 causes; 1. Pur c̄ q̄ le dit act purview generalmēt q̄ lestate quant al creditor serra void, & Acts de Parliament faits en p̄vention ou suppression de fraud doient aver un benign interp̄tation. 2. Si cest matter covient estre plede, c̄ serra mischievous al creditors, & serra mult al maintenāce & increase

(a) 1 Brownl. 111 3 Co. 80. b. 6 Co. 18. b. 10 Co. 56.b. Co. Ent. 162. a. Hob. 166. 3 Inst. 152. 2 Leon. 8, 9. 47, 223, 308, 309, 3 Leon. 57. Latch' 222. 2 Rol. Rep. 493. Palm. 415. Cro. El. 645, 233, 234, 810. Dyer 295. pl. 17. 351. pl. 23. 2 Bulst. 226. Lane 47, 103. Co. Lit. 3.b. 76.a. 290.a. Rastal fraudulent Deeds 1. Rast. Ent. 207. b. Cr. Jac. 270, 271. Moor 638. Yelv. 196, 197.

(b) Hob. 72. Doct. pla. 200. 2 Rol. 684. 6 Co 72. b. 2 Inst. 445.

de fraud & covin, car fraud & covin, (pur ceo que ils sont odious) sont icy privement & secretment hatch en un hollow arbre, in arbore cava & opaca, & cy artificialment cover & conceal, que le ptie grieved nad means a ceo trover ou scaver, donques a chaser le Pl' que est tout estrang a ceo a pleder le feoffment (dont il nad notice) & que ceo fuit fait p fraud, &c. serra mischievous & encounter ley & reason. Et Judgment fuit done pur le Plaintiff. Et en cest case Wray Chief Justice dit: Si A. seisie de terre en fee fait fraudulent conveyance, (al entent a deceiver & defrauder purchasors encontre lestate de (a) 27 Eliz.) & continue en possession, & est repute come owner, B. enter en communication ove A. pur le purchase de ceo & p accident B. ad notice & intelligencie de cest fraudulent conveyance, & nient obstant il conclude ove A. & prist son assurance de luy; en cest case A. avoidera le dit fraudulent conveyance p le dit Act, nient obstant son notice, Car lact ad p expres pold fait le fraudulent conveyance void quant al purchasor, & entant que ceo est deins le expres (b) purview del act, ceo doit estre issint prise & expound en suppression de fraud. Et accordant al opinion de Seignior Wray, fuit unement agree & resolve per totam Curiam in Communi Banco, Paschæ 3 Regis Jacobi, en evidence al Jurie en Ejectione firmæ, sur demise fait p Standen al House Pl', vers Bullock Def. Que ou un Bullock ad fait fraudulent estate de son terre deins le dit act de 27 Eliz. al A.B. & C. & puis nient obstant offer a vender le dit terre al Standen, & devant assurance ent fait p Bullock, Standen ad notice del dit fraudulent conveyance, & ceo nient obstant pceed, & prist son assurance de Bullock que Standen avoidera (p le dit Act) le dit fraudulent conveyance; Car le notice del purchasor ne poit faire ceo bon, que un Act de Parliament fait void quant a luy; Et voier est Quod non decipitur qui scit se decipi. Mes en cest case le purchasor nest deceive, car le fraudulent conveyance dont il ad notice, est fait void quant a luy per le dit Act, & pur ceo ne noyera luy, ne il, quant a ceo, est en ascun manner deceive.

(a) 27 El. cap. 4.

(b) Co. Lit. 3. b. 76. a. 290. a. b.

Standens Case, Pasc. 3 Jac. in Communi Banco.

(c) 3 Co. 82. b. Moor 605, 615. Bridg. 23. Palm. 217. Lane 22. 2 Jones 95.

Mich.

Mich. xxxii & xxxiii Eliz.

In Lexchequer.

Sparries Case.

ISrael Owen port Action sur son case vers James Sparry, de trover de certain quantity de Cotton Yarn, & vend al persons disconus, & conversion a son oeps; Le Defendant plead q̃ le Plaintiff ad auter action sur le case pendant in le Bank le Roy pur mesme le trover & conversion de m̃ les biens, & cest sute prosecute pendant lauter; Judgment del byll. Et sur ceo le Plaintiff demur in Ley. Et fuit resolve per Sir Roger Manwood Chief Baron, & tout le Court del Exchequer, q̃ le byll (a) abatera pur 2 causes. ¶ 1. Pur c̃ q̃ ꝑ le rule del Ley home ne serr (b) 2 foits vexe ꝑ un m̃ cause, Nemo (c) debet bis vexari, si constet Curiæ qd' sit ꝑ una & eadē causa. Mes lanciēt diversity in nr̃e livres est inter Bres q̃ur comp̄hendont certainty cōe in Debt, Detinue, &c. & bres q̃ur comp̄hendont nul certeinty cōe Assise, Trn̄s, &c. car voier est, q̃ en bres (soient eux real ou personel, ou mixt) q̃ur sont certein, est bon plea a dire, q̃ le brief est purchase pendant lauter: Mes in bres real ou personal, ou nul certainty est contein, la nest plea: Come in Assise, le bre est geñal, de libero tenemento; & brief de Trn̄s est, quare bona & catalla cepit, &c. generalm̄t sans asc̄ certainty, ou del chose, ou del tēps, &c. ou dasc̄ convenient certeinty, q̃ poit estre mise en issue, car le Ley require, Quod (d) certa res deducatur in exitū, & non potest constare Curiæ, qd' sit ꝑ una & eadē causa. Mes in Assise, Trn̄s, &c. aps pleint ou count fait (q̃l pleint ou count reduce le generality del bre a certainty) donques bre purchase apres tiel pleint ou count abatera, come appiert in 14

(a) Doct. pla. 67, 68. Moor 539.
(b) Moor 418.
(c) 4 Co. 43. a. 8 Co. 118. b. 11 Co. 59. b. 2 Vent. 170. Cr. Jac. 481. Cawly 78. Noy 82. 1 Rol. Rep. 95. Bridg. 122. Wing. Max. 695.

(d) Devant 35. a. 38. a. Co. Lit. 96. a. 303. a. Hard. 132. March 98.

E. 3.

Moor 883. E. 3. tit. Brē 270. adjudge in le point; Ou en Assise de novel disseisin le tenant plead, que le Plaintiff ad auter brief de assise pendāt de m̄ les tenemēts inter m̄ les parties, & issint cest brē purchase pendant lauter, Judgmēt de brief: Et p̄ c̄ q̄ pleint ne fuit pas fait in le primer bre, issint q̄ non potest constare curiæ de queux tenemēts il soy pleint, le brief fuit agard bon, & il plead al issue. Et ove c̄ accord 14 Ass. pl. 7. 29 (a) Ass. pl. 40. Vide 14 E. 3. tit. Br. 318. Brē de rescous port, pendant un auter, abatera si soit de record, q̄ le Plaintiff ad count en le primer brief, ou autermēt nemy, & (b) 39 H. 6. 12. b. accord per Prisot in ass. ap̄s pleint, & in Trn̄s apres count le plea est bon. Mes in le case al bar le primer action sur le case sur trov & conversion, soit c̄ ꝑ Brē ou ꝑ bill est icy cy certein, come action de trn̄s est ap̄s count fait. Mes le reason in (c) 5 H. 7. 15 a. b. (q̄ cōe semble le Reporter misprist) fuit oustermt denie ꝑ le Court, ou est dit, q̄ p̄ c̄ q̄ divers trespasses poyent estre fait en un mesm̄ jour, a cest cause nest plea (cōe la est dit) in trn̄s q̄ auter actiō est pendant, &c. pur m̄ le trn̄s, Car ꝑ m̄ le reason, apres que le Plaintiff ad recover en trn̄s, & port action pur m̄ le trn̄s arrere, le Def. ne poit avre, q̄ tout est pur un mesm̄ trn̄s. Mes le livre in (d) 20 H. 6. 44. b. 45. a. fuit affirm destre bon ley: Ou en forger de faux faits, le Defendāt demand jugment del brē, pur ceo que le Plaintiff ad autiel brē de mesme le forgery de faits a que il ad appear, & cest brief purchase pendant lauter, Car le brief de forgerie de faux faits est general, Quare diversa falsa facta fabricavit, vel quoddam falsum factum fabricavit: Et le Def. nad plead q̄ le Plaintiff ad coūt in le primer brief dont le certeinty poit appear, a cest cause Newton compare c̄ al brē de trn̄s, & agard le Def. a rn̄der, Vide (e) 14 H. 7. 12. b. & 22 (f) H. 6. 15. b. q̄ en action de trn̄s pur un chival, que per le count est reduce a certeinty, est bon plea al brief q̄ repl' pend de mesm̄ le prisel; ou averment est allow que tout est pur un m̄ le prisel, & uncore poient estre diverse prisels in mesme jour, q̄ est encounter le reason de 5 H. 7. & accord ove cest resolution. Et ove ceo accord auxy le livre en 22 H. 6. f. 52. a. ou le case de trn̄s est adjudge, Car la en trn̄s le Def. dit que le Plaintiff ad pur mesme le trn̄s un auter brief pendant vers le Defendant, sur que il ad declare, judgment de cest brief purchase pendant lauter, & Newton & tout le Court agard, que le brief abatera. Nota la est parcel del plea al brē, que le Plaintiff ad declare, ꝑ q̄ il ad fait le chose certein, & c̄ est le diversity inter cest case, & les cases en (g) 20 H. 6. 44. & (h) 5 H. 7. 15. a. b. Car le principal

(a) Br. brief 300. Br. Assise 299.

(b) Br. brief 259. Fitz. brief 142.

(c) Doct. pla. 68. Br. brief 321.

(d) Fitz. brief 87.

(e) Br. Trespas 171. 14 H 7. 12. b. 13. a.

(f) Fitz. Trespas 59. Br. Trespas 152. Br. brief 188.

(g) 20 H. 6. 44. b. 45. a. Fitz. Brief 87.

(h) Doct. pla. 68. Br. Brief 321.

principal case en 5 (a) H. 7. fuit affirm destre bon ley, car la ne fuit parcel del plea q̃ le Plaintiff ad count: Et le case al barre fuit pluis fort, car ne serra intende que fuer diverse venditions & conversions en un m̃ jour. Fuit auxy resolve, que coment le primer action fuit en auter Court, s. en Bank le Roy, ou vice versa, que le plea est bon. Vide 43 (b) E. 3. 27. a. acc', & que liure en 34 E. 3. Bre 789. est bon ley. Car nappiert per le plea, q̃ le Plaintiff, ou le Defendant fuit priviledge in Leschequer, & donques per lestatute de Articul' super Chartas cap. 4. est purview, que nul common plea serra tenus en Lerchequer. Mes en 43 E. (c) 3. 27. a. appiert, que le Defendant fuit priviledge in Lerchequer, & pur ceo le plea al Brief la fuit bon. Mes si homes port action de Debt p bill en Londres ou Norwich, ou en ascun autre inferior Court, & puis port brief de det en le Common Bank, cest suit en le pluis haut Court, que est purchase pendant suit per bill en un inferior Court nabatera; come appiert en 7 (d) H. 4. 8. a. & 3 (e) H. 6. 15. a. b. Vide 43 E. 3. 22, 27. & (f) 7 H. 4. 44. a. b. Brininghams Case. Mes dicit 9 E. 4. 53. b q̃ touts les Courts le Roy al Westm̃ ount estre de temps dount memory, &c. & issint home ne poit scaver, que de eux est le pluis ancient Court. Et puis fuit adjudge, q̃ le plea fuit bon, & le Plaintiff prist riens per son bill. Issint nota Lecteur, touts les liures, q̃ prima facie semble a disagreer, sur plein & preignant reason sont unement agree & reconcile.

(a) 5 H. 7. 15. a. b. Doctrin. placit. 68. Br. Brief 321. Devant 61. b.

(b) Fitz. Bar 197. Br. Debt 35. Br. Brief 66.

(c) Supra.

(d) Fitz. Brief 225 Br. Brief 108. Br. Estoppel 54.

(e) Br. Estoppel 1. Br. Brief 8. Fitz. Estoppel 15.

(f) Fitz. Action sur le Case 26. Br. Action sur le Case 37.

Cases de By-Laws & Ordinances.

Mich. xxxii & xxxiii Eliz.

In Bank le Roy.

Chamberlain de Londres Case.

3 Leon. 264, 265. 1 Rol. 365.

Le Chamberlain de Londres port action de Dette in London in le Guildhal la, vers divers persons, &c. Et fuit ground sur un act de Common Council, ou Ordinance, fait per le Major, Aldermen & Cominalty del City a lour Common Assembly (que ils faiont per Custom & que inter auters, est confirm per divers Acts de Parliament) per que fuit ordein, Que si ascun Citizen, Freeman ou estranger deins le dit City mittera ascun Broadcloth a sale deins le City de Londres, devant il soit port a Blackwelhall, destre view & search, issint que poit apperer destre vendible, & que hallage soit pay pur ceo, s. 1 d. pur chescun cloth, que il forfeitra pur chescun cloth 6 s. 8 d. Et ouster fuit ordein, pur tiel forfeiture le Chamberlain del City de Londres pur le temps esteant, averoit action de Det, &c. & pur ceo que les Def. ount infreint le dit ordinance, pur le penalty inflict per le dit ordinance le Chamberlain de Londres port action de Det en Londres, & ceo fuit remove per Corpus cum causa en Bank le Roigne. Et fuit move que ceux de Londres ne poient faire Leys ou Ordinances a lyer les Subjects le Roigne, & principalment estrangers, car donques ils averont cy haut authority come Act de Parliament. Et 2. le dit ordinance (come fuit urge) fuit encounter le ley, & le freedom & liberty del Subject, a compeller luy a porter ses clothes a ascun un lieu. 3. Le imposition dun denier pur hallage fuit un charge al Subject, & per mesme le reason que ils poient imposer un denier, ils poient imposer 2 d. & issint infinitum.

Et

Et un del Inner Temple a Counsel ove le City, move daver Procedendo. Appiert per mesme presidents, que ad estre use deins le City de Londres de temps dont, &c. pur ceux de Londres, a faire Ordinances & Constitutions pur le bon order & governement des Citizens, &c. consonant al ley & reason, queux ils appellont Acts de Common Counsel. Auxy touts lour Customs sont confirm per diverse Acts de Parliaments: Et touts tiels Ordinances, Constitutions ou Bilaws sont allow per la ley, queux sont fait per le voyer & due execution del Leys ou Statutes del Realm, ou pur le bon governement & order del corps incorporate: Et touts auters queux sont contrary ou repugnant al Leys ou Statutes del Realm, sont void & de nul effect: Et quant a tiels Ordinances & Bilaws, ceux diversities fuer observe; Inhabitants dun ville, sans ascun custom poient faire Ordinances & Bilaws pur reparation del (a) Esglise, ou dun haut voy, ou dascun tiel chose, que est pur le bien publique generalment, & in tiel case le greinder part lier touts sans ascun custom. Vide 44 E. 3. 19. Mes si soit pur lour pridate profit demesne, come pur le bien ordering de lour (b) common de pasture, ou semblables; la sans custom ils ne poient faire Bilaws: Et si soit un Custom, donques le greinder part ne lier touts, si ceo ne soit garrant per le custom. Car sicome custom create eux, issint doient eux estre garrant per le custom. Vide 8 E. 2. tit. Assise (c) 413. Auxy Corporations ne (d) poient faire Ordinances ou Constitutions sans custom, ou Charter le Roy; sinon pur choses que concern le bien publique, come reparations del Esglise, ou common voyes, ou semblables. Vide 44 E. 3. 19. 8 E. 2. tit. Assise 413. 21 E. 4. 54. 11 H. 7. 13. 21 H. 7. 20, & 40. 15 Eliz. Dyer 322. Et quant al le case al barre, mults Statutes fuer faits pur le voier fesance de Woollen Cloth, que est principal commodity de cest Realm. Et al intent q̄ les dits Statutes serront mieux execute sans ascun disceit, le dit Act de Common Council fuit fait, q̄ ils serr port a Blackwel Hall, come a un lieu publiqe, & conus, al intent que ils poyent estre search & vieu, sils sont faits accordant al dits Statutes: Issint le dit ordinance esteant fait pur le melior observation & execution des dits leyes, a preventer touts frauds & faurity, fuit bon (e) & allowable per le ley. Auxy le assessing del dit (f) denier pur hallage fuit bon, pur ceo q̄ fuit pro bono publico, & fuit competent & reasonable ayant regard al benefit

(a) Apres 67. b. Hob. 212. Mod. Rep. 194.

(b) Cr. Car. 498. 1 Anders. 234. 1 Leon. 190. Hob. 212. Goldsb. 79. Carter 178.

(c) 2 Brownl. 179. 3 Leon. 265. Hob. 212.

(d) 1 Rol. 513. Hob. 211.

(e) 1 Rol. 365. 3 Leon. 264, 265. Hob. 212. Moor 580. 2 Jones 145. 8 Co. 127. a. Pollexfens Argument in Quo Warranto 81. Hardr. 56, 210. Lane 24. Bridg. 140, 141. 1 Rol. Rep. 115.

(f) 8 Co. 127. b. 2 Brownl. 287, 288 Hard. 56, 210. Pollexfens Argument in Quo Warranto 81. Trebies Argument in Quo Warranto 33. Cro. Arg. 22. 1 Rol. 365.

(a) 11 Co. 54. a. que le subject enjoy per le reason del dits (a) ordinances, & tiels assessements esteant pur le maintenance del bien publicq, & nemy pro privato lucro, fueront maintenable per le ley; & ceo ne fuit destre dit burthen ou charge al subject, quant il reap benefit de ceo: Mes est semblable al pontage, murage, tolle, & similia, come appiert en 13 H. 4. 14 b. en queux cases le summe pur reparations des ponts, mures, &c. covient estre cy reasonable, q̃ le subject avera pluis benefit per ceo q̃ charge. Auxy le penalty inflict sur le offendor, soit il Citizen ou Stranger, fuit loyal, loffence esteant commise deins le City, & le summe esteant competent & proportionable al offence, & sans penalty lordinance serra in vain. Car (b) Oderunt peccare mali formidine pœnæ. Et lappointment q̃ lour (b) Chamberlain esteant lour publick officer de dette, port action de dette fuit bon & allowable per ley, & lordinance esteant accordant al ley, poet estre mise in execution sans ascun auter allowance, (d) nient obstant lestatute de 19 H. 7. cap. 7. Et apres grand deliberation, Wray Chief Justice per advice dauters Justices, grant Procedendo. Vide 2 (e) E. 3. 7. John de Bretaignes Case. Le Roy poet grant per son Charter, q̃ touts manner des niefs veignantes in tiel haven charges ove Merchandises, serra discharge in un certain lieu, & non alibi, &c. al intent q̃ il serra mieux trive de ses customs, & auters duties.

(b) 3 Leon. 265.
(c) 1 Rol. 366.
(d) 1 Rol. 363.
(e) Hardres 55. 2 Brownl. 179, 278. 1 Rol. Rep. 5. Palm. 3.

Trin.

Trin. xxxviii Eliz.

In Communi Banco.

Clark's Case.

EN action de Faux imprisonment port per Clark vers Gape: Le Def. justifie le imprisonmēt, pur ceo que le Roy E. 6. encorporate le Ville de St. Albans per nosme de Major, &c. & grant a eux a fair ordinances, & mēe q̄ le Roigne appoint le Term destre tenus la, per q̄ ils ꝑ lassent le Pl', & des auters Burgesses, assesse un somme sur chescun inhabitant pur les charges in erecting des Courts la, & ordein, que si ascun refuser a paier, &c. que il sert imprison, &c. & pur ceo que le Plaintiff esteant Burgess, &c. refuse a paier, &c. il come Major justifie; & fuit adjudge nul plea. Car cest ordinance est encounter lestatute de Magna Charta cap. 29. Nullus liber homo imprisonetur: Quel act ad estre confirm, & estably oustre 30 foits, & lassent le Pl' ne poit alter le ley in tiel case. Mes fuit resolve, que ils poient aver inflict reasonable penalty, mes nemy imprisonment, q̄l penalty ils poient limit destre levy per distress, ou pur q̄ action de det gist, & le Plaintiff ad Judgment.

1 Rol. 363, 366, 367, 599. 1 Jones 162. 8 Co. 127. b. 2 Bulstr. 328. Stiles 85. Moor 411, 412 580. 2 Inst. 54, 702. Cr. Argument 22. Bridg. 141, 142. 2 Brownl. 288. Hob. 61.

Mich. xxxi & xxxii Eliz.

Rotulo 447.

Jeffrey's Cafe.

MEmorandum, quod die lunæ proxim̃ poſt menſem ſancti Michaelis iſto eodem Termino, corã Domina Regina apud Weſtm̃, veñ Willielmus Jeffrey generoſus in propria perſona ſua, Et dat̃ Cur̃ dict̃ Dñæ Reginæ nuc hic intelligi, quod cum ſecundum legem terræ & conſuetudinem hujus Regni Angliæ, a tempore cujus contrarii memoria hominum non exiſtit, infra idem Regnum habit̃, & uſitat̃; Inhabitant̃ & reſidentes infra aliquam Parochiam infra Regnum pd', infra quam quidem Parochiam aliqua Eccleſia parochial̃ extitit, Eccleſiam illã ſumptibus ſuis propriis quoties neceſſe fuerit reparar̃, & a toto tempore ſupradict̃ reparare couſuever̃ & debuer̃, & quod quælibet alia perſona ſeu perſonæ inhabitans, ſeu inbabitant̃ extra parochiam illam in aliqua alia parochia, de factione hujuſmod' reparation̄ a toto tempore ſupradict̃' exonerat̃ & acquietat̃ fuer̃, cumq; etiam p legẽ terræ & conſuetudinem pd' non licitum ſit, alicui perſonæ ſive aliquibus perſonis, imponere aliquam compoſitionem ſive taxationem ſuper aliquam perſonam non inhabitantem in aliqua parochia, ubi hum̃odi Eccleſia reparand' ſit, in reſpect̃' ſeu ration̄ aliquor̃ terr̃ ſive tenem̃tor̃, quæ eadẽ perſona tenet vel occupat in eadẽ Parochia ubi hum̃odi Eccleſia reparanda ſit, ut ſupradict̃' eſt, p reparatione alicujus talis Eccleſiæ ſic irreparat̃ ſine aſſẽſu ſuo, cumq; etiam triatio & detminatio cauſæ pd' ſit mat̃ia terminabilis ad cõmunem legem; & non p jura ſeu cenſuras Eccleſiaſtic̃ quoviſmodo triari, terminari & diſcuti debeat, nec a tẽpore cujus cõtrarii memoria hominum non exiſtit conſuevit: Quidã tamen Abraham Kenſhley & Thomas Foſter Gardiañ ſive œconomi Parochiæ de Hayleſham in Com̃ Suſſex aſſerint, pmiſſorũ non

non ignari, falso & subdole ꝑtendeñ ꝑd' Wilł Jeffrey fore inhabitantem infra Parochiã de Haylesham ꝑd' (ubi re vera præd' Wilł Jeffrey est, & semper fuit inhabitans infra Parochiam de Chiddingley in Coñ Sussex, & nunquam fuit inhabitans infra Parochiã de Haylesham ꝑd') ac eãdem Ecclesiã de Haylesham ꝑd' ꝑ teneñ & ꝓprietarios terraꝛ & tenemtoꝛ, infra eandem Parochiam reparari oportere & debere, machinañ dictam Dominam Reginã nunc & Coronam suam Regiam exhæreditare, cognitionemq; płit quæ ad dictã Dominam Reginam nunc & Coronam suam Regiam, & non ad Cuꝛ Christianitaꝛ in hac parte ꝑtinet, ad aliud examen in Cuꝛ Christianitaꝛ traheꝛ, ipsum Wilł Jeffrey in Cuꝛ Christianitaꝛ ꝑd' coram Johanne Drury Legum Doctore, in & ꝑ totũ Archiñ Lewen reverend' in Christo Patris Doñ Thomæ ꝓvidenc̃ diviñ Cicesteñ Episcop' officiali principali rite deputaꝛ ad ꝓvincionem ꝑd' Abrahami & Tho. Foster in hac parte, de & ꝑ quadã taxatione super ipsum Wilł Jeffrey ad & circa reparationes Ecclesiæ de Haylesham ꝑd' imposiꝛ citari feceꝛ: ac eundem Wilł in Cuꝛ Christianitaꝛ ꝑd' coram ꝑfato Judice spirituali comparere, eundemq; Wilł sic comparentem ad respondend' quibusdã articulis de & ꝑ taxatione ꝑd', viz. de eo qd' idẽ W. Jeffrey scivit, credidit vel audivit qd' infra Archiñ Lewen in Coñ ꝑd' fuit quædam Ecclesia cõmuniꝛ vocaꝛ The Parish Church of Haylesham: Et qd' eadẽ Ecclesia Parochiał in quãpluꝛ ꝑtibus ejusdẽ Ecclesiæ tam in tegimñto quã in cooperimñto ejusdẽ quã aliis indiguit & indigebat: Ita ut nisi repararet ruinã pati verend' fuisset, quodq; tam de jure cõmuni quã de antiqua laudabili & ꝑscripta cõsuetudine, necnon a tẽpore & ꝑ tẽpus cujus cõtrarii memoria hominũ non existit inviolabiliꝛ & incõcusse usitaꝛ & observaꝛ fuit infra Parochiã de Haylesham ꝑd' quod omnes & singulos Parochiañ reparatioñ Ecclesiæ alicujus irraparaꝛ intẽdenꝛ juxta ratã & qualitatem possessioñ in eadem Parochia habenꝛ vel occupanꝛ cuilibet infra dictã Parochiã possessiones habend' & obtinẽd' collectionẽ sive taxationẽ imponere potuissent & debuissent. Ac etiam quod dict' Ecclesia matura deliberatione præhabita non minore summa sexaginꝛ decem libꝛ legalis monetæ Angliæ sufficienꝛ reparari potuit, necnon quod Gardiani Ecclesiæ Parochiał de Haylesham prædict' pro tempore existeñ, anno Domini 1589, & duobus annis, tunc proxñ ꝑteritis, de & in consensu omnium Parochianoꝛ de Haylesham ꝑd', seu majoris & melioris partis earund' quandã cõtributionem juxta quantitatem & qualitaꝛ possessioñ ꝑdict' & redditꝛ infra dict' Paroch' existeñ in ꝑd' Ecclesiæ reparationem, possessiones prædict',

prædict', seu reddit in eadem Parochia omnibus & singulis habend' & obtinend', imponend', & de eisdem taxand' decrevissent; diemq; & locum p hujusmod' cōtributione, & taxatione faciend' statuissent: quodq; eodem die, quo dict' contributio imponenda foret præcedeñ omnibus Parochianis prædictis, necnon forensibus, terras prædict' possessioñ, seu reddit in Parochia de Haylesham prædict', habend' & obtinend', in dicta Parochia de Haylesham prædict'; necnon in foro publico ibidem adfuisset concursus populi quibus die & loco contributio præd', & taxatio faciend' & imponend' esset. Ac quod die & loco statut pro impositione præd' taxationis, sive contributionis, ill Gardiani, necnon Parochiani dict' Parochiæ ad hujusmod' contributioñ, sive taxationē faciend', processer. Ac summam quatuor denar de qualibet acr voc **Marsh Land**: Necnon summā duorum denar legalis monetæ Angliæ de qualibet acr terræ voc **Upland**, infra dictam Parochiam de Haylesham præd' existeñ, in reparationem dict' Ecclesiæ p habentes & occupatores dictarū acr, dictis Gardianis solvend' imposuer. Necnon qd' idem Willielmus trigint acr Marisci, voc **Marsh Ground**, & centum acr terræ voc **Upland**, infra Parochiam præd', tenuit, occupavit seu reddit pro eisdem adtunc recepit. Ac quod summæ ab occupatoribus & habentibus possessiones præd', sive reddit infra dictam Parochiam de Haylesham prædict', juxta collectionem sive taxationem prædict', levand' & colligend' non ultra summam quinquagint libr legalis monetæ Angliæ extendebant, sub nomine & colore officii sui (ut præfertur) de & in præmissis respondere minus juste astrinxit. Ac licet idem Willielmus Jeffrey materiam prædictam superius content in Curia Christianitat prædict', coram præfat Judice Spirituali in exonerationem suam in præmissis sæpius placitaverit, allegaverit, & illa inevitabili veritate & testimonio pbare obtulerit; quodq; ipse p legem terræ in forma præd' citari non debuisset, p solutione præd' summæ super ipsum Willielmum Jeffrey, p reparationibus Ecclesiæ de Haylesham præd', ut præfertur taxat, ac quod taxatio præd', p reparationibus Ecclesiæ in casu prædict', existit materia terminabilis ad communem legem, & non in Christianitat: dictus tamen Judex spiritualis placitum, & allegac illam admittere penitus recusavit, ac prædict' Abraham & Thomas Foster ipsum Willmum Jeffrey in Curia Christianitatis præd' in præmissis condemnari, ac ad solvend' præd' separales denar summas super ipsum Willielmum Jeffrey pro reparatione Ecclesiæ præd' superius in hac parte spec imposit & taxat

quas

quas ipſe per legem terræ (ut præfertur) ſolvere occaſione pd' non debeat, ſeu tenetur facere, per definitivam dict' Cur Chriſtianitat ſententiam totis ſuis viribus conantur & indies machinant; in dict' Dominæ Reginæ nunc contemptum, & ipſius Willielmi Jeffrey damnum, præjudicinm, depauperationem & gravamen manifeſt', & contra legem terræ prædict': Et hoc idem Willielmus Jeffrey parat eſt verificare, unde idem Willielmus Jeffrey auxilium & munificenc Cur dict' Dñæ Reginæ nunc humilime implorando, per remedium, & breve Dñæ Reginæ de Prohibitione pfat Judici ſpirituali in forma pdicta, ad prohibend' ipſum ne ipſe placitum pdict', pmiſſ, quoviſmodo tangen coram eo ulteius teneat. Et ei conceditur, &c. Et ſuper hoc ven Johannes Porter de Chiddingly in Com Suſſex Armig, & Thomas Aynſcomb de Buxſted in Com præd' Gen, in ppriis perſonis ſuis, & manucaper pro pfat Willielmo Jeffrey, quod ſi conting præd' Abrahamum Kenſhley & Thomam Foſter ad Cur Dominæ Reginæ hic impoſter accedere ad breve Dominæ Reginæ de Conſultatione impetrand', ſeu aliter, Juſtic ibid' de & ſuper præmiſſis proſequend', quod tunc idem Willielmus dictam materiam ſive ſuggeſtionem proſequitur cum effectu, quouſq; placitum inde aliquo legitimo modo terminet, videlt, uterq; manucapt prædictorum ſub pœna decem libr, quam quidem ſummam decem libr, præd' manucapt cogn, & uterq; eorum per ſe cogn, de terr & catallis ſuis & eorum cujuſlibet fieri & ad opus dict' Dominæ Reginæ levari, ſi conting dict' Willm præmiſſa non pſequi in forma prædicta cum effectu, &c.

Mich.

Mich. xxxi & xxxii Eliz.

In Bank le Roy.

Cr. El. 659. Hob. 212. Mod. Rep. 261. Hardr. 379.

William Jeffrey Gen̄ port Prohibition envers Abraham Kenshley & Thomas Foster, & count que per le ley de cest Realm les Parishioners de chescū Parish, ou ils sont cōmorant, doiēt repair lour proper Esglise, & nemy les Parishioners de ascun auter Parish, &c. Les dits Thomas & Abraham esteāt Churchwardens del Parish de Haylesham en le County de Sussex, ount sue le Pl' en Court Christian devant Doctor Drewry in le Dioces de Chichester, pur certain deniers impose sur le dit William Jeffrey sans son assent, pur 30 acres de marsh, & 100 acres de terre, queux le dit William Jeffrey ad, & occupy in le dit Parish de Haylesham, pur le reparation del Esglise de Haylesham, & ount constrain luy a rēder a certain Articles, s. que le dit Esglise fuit in decay, & que ne poit estre repair pur meins que pur 70 l. Et que le dit Churchwardens del dit Esglise pur le temps esteant, anno Domini, 1589. & deux ans devant, ove lassent del greinder part del Parishioners del dit Parish, juxta quantitatem & qualitatem possessiō & reddit infra dictam Parochiam existeñ, determine & agrée a fair taxation pur le reparation del dit Esglise, & que notice de tiel assemble fuit done in l'Esglise, & aury proclaim in le market, & q̄ al jour issint appoint, les Churchwardēs & greinō part des Parochians de Haylesham, q̄ fuer̄ la assemblies, fesoient un taxation, s. de chescun acre de marshland 4 d. & de chescun acre de arable terr̄ 2 d. destre pay p̄ les occupiers de eux en Haylesham avantdit, & que le dit Will' Jeffrey les dits 30 acres de marsh, & 100 acres de terre occupy, ou receive rent pur eux, & que tout le dit taxation del dit ville ne exceed le summe de 50 l. Et count ouster, que le dit William Jeffrey al temps del dit taxation, & longe temps devant, & uncore est un Inhabitant del Parish de Chiddingley deins le County de Sussex, & ne unques inhabita deins le Parish de

de Haylesham, & q̃ il ad plede cest matter en Court Christian, & le Judge refuse la dallower ceo. Et sur cest count, Coke de Counsel ove les Def. demurr̃ en ley. Et apres plusors arguments al barre & al bench; Fuit adjudge, que Consultation serra grant. Et en cest case ceux points fueront resolve.

1. Que le Court Christian (a) ad conusans de reparatione corporis sive navis Ecclesiæ, & ceo appiert per Britton, q̃ escrie, in 5 E. 1. lib. 1. cap. 4. fol. 11. & en lestatute de Circumspecte agatis, &c. mes in rebus manifestis errat, qui authoritates legum allegat, quia perspicue vera non sunt probanda, p̃ c̃ que cestuy q̃ indevor a prover eux, obscure eux. Et fuit object, q̃ le cause q̃ chescun Parishioner est charge al reparations del Esglise, & a provider convenient ornamts deins ceo pur le greinder conveniency & honor del Divine Service, est primermt p̃ le spiritual comfort, q̃ il ad en le oyant del parol de Dieu la, p̃ son instruction en le voyer chemin al icel en celebration des Sacramts, & en presenting al Dieu lour priets, non solemt privatemt, mes ove le grand Congregation destre thankful al Dieu pur touts ses benefits, & a desire de luy touts choses necessaries, &c. en respect de queux inestimable benefits, il est chargeable a repairer son proper Esglise, en q̃ il receive eux; Mes ne serra lye al reparation dascun auter Esglise en aut̃ Parish, en q̃ il ne inhabite. Et le description de cest parol (Parochia) fuit observe; Parochia est locus in quo degit populus alicujus Ecclesiæ. 2. Fuit object, que serra dure a charger le dit Jeffreys a tiel taxation, p̃ ceo q̃ il fuit demurrãt en auter ville, & ne unques consort ove ceux de Haylesham a ascũ de lour assemblies ou assessemts pur tiels purposes.

3. Ou fuit object que le libel en Court Christian vers le dit William Jeffrey fuit en le disjunctive, q̃ le dit William Jeffrey occupy les dits terres, ou receive rent p̃ eux; sur q̃l libel si Rensley & Foster averont Consultation, coment que Jeffrey ne occupy les terres luy m̃, mes ad un fearmor en Haylesham, q̃ paie a luy rent, que uncore Jeffrey poit estre charge, q̃ serra encounter ley & reason, & encounter le common experience de tout Engliterre. Fuit respond & resolve primerment, que coment que le meason en que Jeffrey demurre, soit en auter Parish, uncore entant q̃ il ad terres en le Parish de Haylesham en son proper possession & manurance, il est en ley Parochianus de Haylesham, Car le lieu ou il couche, dormie, ou maunge, ne fait luy solement Parishioner, mes auxy entant q̃ il manure terre en Haylesham, & per ceo est resident sur ceo, ceo fait luy Parishioner

(a) 2 Rol. 289.

(b) 2 Inst. 487, 488, &c.

Le Resolution del Court.

2 Rol. 289. Cr. El. 659, 843. 2 Rol. Rep. 262. 2 Inst. 653, 702. Winch 53. 2 Brownl. 10. 1 Bulstr. 20. 2 Saund 423.

Parishioner de Haylesham auxy qnt a cest purpose. ¶ 2. Si en cest case Jeffrey ne serra charge al reparation del Esglise de Haylesham pur ceux terres, que il mesme occupy la, nul person serra charge a ceo pur eux, sur quel grand inconvenience ensuet, car un que inhabite en le prochein ville, poit occupy le greinder part des terres, en auter ville; & issint Esglises en ceux jours deveignet al ruine. Mes fuit resolve, quant la est un (a) fearmour de mesme les terres, le lessor que receive rent pur eux, ne serra charge pur eux en respect de son rent, pur ceo que la est un Inhabitant & Parishioner, que poit estre charge, & receit del rent ne fait le lessor Parishioner. ¶ 3. En cest case le charge est sur le person, & nemy sur le terre; mes est sur le person en respect del terre pur le pluis equality & indifferency. Vide le Register fol. 44. b. inter Consultationes. Consultatio ad procedendum contra Parochianos super emendationem corporis sive navis Ecclesiæ, &c. ubi prohibitio de Laico feodo prius porrecta fuit, que est destre entende, quant le taxation fuit del person, en respect de son lay fee. ¶ 4. Coment que il est demurrant en auter ville, uncore entant que en Judgment del ley, il est Inhabitant & Parishioner de Haylesham, il poit vener sil voit al assemblies des Parishioners de Haylesham, ou ils conveigh pur tiels purposes. Et Sir Christopher Wray Chief Justice dit, que entant que le conusans del reparations del Esglises appent al Court Christian, fuit necessary a oyer lopinion de ceux queux professont le Ecclesiastical Leys, quant a cest point; Et issint fuit fait. Et sur ceo divers de eux desouth lour mains en escript certifiont lour opinions, que Jeffreys per lour ley fuit Parochianus de Haylesham quant a cest purpose, & chargeable al reparations del dit (b) Esglise de Haylesham; Et que les Churchwardens, & greinder part des Parochians (sur tiel general warning) assemblies, poient faire tiel taxation per lour ley, & que ceo ne charge le terre, mes le person en respect del terre pur equality & indifferency. ¶ 5. Quant al objection, que le Libel fuit en le disjunctive, &c. Fuit respond & resolve, que coment que le (c) Libel soit issint, uncore les Defendants avet un especial Consultation solement en respect de tiels terres, queux le dit William Jeffrey al temps del taxation avoit en ses proper mayns, & eo potius, pur ceo que le dit Jeffrey ad confesse en son count sur le dit Prohibition, que il mesme al temps del

(a) 2 Rol. 289. Cr. El. 659. 2 Rol. Rep. 270.

(b) Mod. Rep. 194. Hob. 212. Devant 63. a.

(c) Hob. 115, 192.

del dit taxation, &c. avoit les dits ?res en son occupation demesne; Et un special Consultation fuit agard: Et ceo fuit le primer leading case que unques fuit adjudge & report en nostre livres des ans quant a cest matter. Et puis, s. Pasch. 41 Eliz. inter Paget & Baump, en Bank le Roy, en temps de Popham Chief Justice, le point devant en question arrere, sur autiel taxation, Prohibition esteant obtain apres plusors arguments & grand deliberation. Tandem sur le view del record de cest case al barre, que fuit adjudge en le point; Fuit resolve arrere per Popham Chief Justice, & totam Cur, que Consultation serra grant accordant a cest Judgment, & ore est generalment allow & receive pur ley. Nota Lecteur, cest bon case a plusors purposes, & pur ceo observe biens les consequents de ceo. Cr. El. 659.

Mich. xxxiii & xxxiv Eliz.

In Curia Wardorum.

Le Seignior Cheiney's Case.

SIR Thomas Cheiney Chivaler, Seignior gardein des Cinque Ports, Anno 1 Eliz. fist son volunt en escript, & per ceo devise al Henry son fits divers Manors, & a les heires de son corps le remainder al Thomas Cheiney de Woodley, & a les heirs males de son corps, sur condition; That he or they or any of them shall not alien, discontinue, &c. Et fuit un question en le Court de Gards, enter Sir Thomas Perot heir general al Seignior Warden, & divers des purchasors de Sir Thomas Cheiney, si le dit Sir Thomas serra receive, a prover per testmoignes que fuit lentent & meaning del devisor, de includer son fits & heir deins Moor 727, 728. Wing. Max. 15.

ceux pols del condition (he or they) & nemy tantsolemt a restrainer Thom Cheiney de Woodley, & ses hrs males de son corps. Mes Wray & Anderson Chief Justices, sur conference ew ove les auts Justices, resolve q il ne serra receive (a) a tiel agreemt hors del volunt, car le volunt concernant tres, &c. covient estre en escript, & constructions de volunts covient ee collect (b) des pols del volunt en escripture, & nemy p ascun agreemt dehors; Car serra plein de grand inconvenience, q nul scava p les escript pols del volut, qil costruc a fair, ou qil advise a doner, mes e serr controll p collateral agreemts hors del volunt. Mes si homes ad (c) 2 fits, ambideux baptize p nosme de John, & pensant q leign (q avoit longmt ee absent) soit mort, devise s tre p s volunt en escript a s fits John generalmt, & en vity leign est en vie, en cest case le puisne John poit en pleading ou en evidence alledge le devise a luy, & si e soit deny, il poit producer tesmoignes a prover lentent de son pier, q il pensoit laut dee mort, ou q il al temps del volunt fait, nosme s fits John le puisn, & lescrier omit laddic del puisn; Car en 47 E.3.16.b. le case fuit, Rob. Peynel ad issue 2 fits baptize p nosme de William, & (d) levy fine a Sir John Fanningbridges & auts, come e, &c. quer grant & rend al Rob & Will s fits genalmt, & puis le mort de Rob. Will le puisne fits port Scir fac vs le hr del Will, leign & le puisn p le rule del Court avert la fin fuit levy de luy inheriter, prist, & sur e issue fuit prise, & q nul inconvenience poit surder, si agreemt en tiel case soit prise en case de devise p volut, car cesty q veia tiel volut, p q tre est devise a s fits John, ne poit ee deceive p ascun secret invisible agreemt, car qnt il veia le devise a s fits John, il covient a s pil a inquire qil John le testator entend, q poit facilmt ee conus p cey q escria le volunt, & auts qur fuer privy a s entent, & si nul direct proof poit ee fait de s entent, donqs le devise est void p le (e) incertainty, come le rend auxi serr en le dit case del fine, qnt a Will, car la ley ne serra lun ou laut p costruc inheritable, car ney leign fits e ava p course del ley, p e q leign ne besoign dad addition, neqs le puisne e ava p construction, p le reason q le pere ne besoign dad limit le tre al eign, p e q le tre aps le mort del pere discendee al eign; Mes cesty e ava q le pere entend dadvancer ove e, & p default del proof de tiel entent, le volunt ou render est p lincertainty, coe ad estre dit, void. Et issint le doubt en 11 H.6.13. bien explain.

(a) 1 Rol. 422. Wing. Max. 15.

(b) 4 Co. 4. a. Latch 42. Jenk. Cent. 115. Cr. El. 498. Moor 222. 2 Bulstr. 177, 178. Bridg. 135. Godb. 432. Lit. Rep. 188. Hutt. Arg. 49, 50. Stiles 293, 294. Wing. Max. 22. Raym. 410, 411. 2 Leon. 70. 1 Brownl. 132, 191.

(c) 1 Brownl. 132. Stiles 293. Moor 105. 2 Leon. 217. Swinb. 108. Hob. 32.

(d) 8 Co. 155. a. Br. Nosm. 63. Cr. Eliz. 531. Br. Fine 28. Fitz. Feoffment 56. Kelw. 49. a.

(e) 1 Bulstr. 62. Swinb. 108.

Mich.

Cases de Usury.

Mich. xxxiii & xxxiv Eliz.

In Bank le Roy.

Burton's Case.

IN Replevin port p Humfrey Burton enũs H.H. il avowa, p̃ c̃ q̃ Thomas Woodhouse Armig̃ fuit seisie del lieu ou, &c. conteignant 10 acres en Hicklyn en le County de Norff. inter alia, Et issint seisie 17 Julii, anno 21 Reginæ Eliz. p son fait grant al A. G. Armig̃. un annuel rent de 20 l. issuant hors del lieu, &c. inter alia, a pceiver a luy & a ses hẽs al Feasts de Nativty de Christ, & Saint John Baptist, annuelmt dẽe pay; Le prim̃ paymt a comencer al Feast de Nativity de Christ, q̃ serra in Anno Dñi 1580. & puis A. p fait conus devãt Justices del Peace, & Clerk del Peace, del dit County, & inrolle solonqz lestat, bargain & vend le dit rent al Def. & ses hẽs, q̃ p̃ rent arrere avowa, &c. Le Pl' en barre del dit avowry plead le stat de Usury, & alledge q̃ le dit 17 Julii, anno 21. inter eosdem Thomã Woodhouse, & A. G. taliter concordatũ fuit p viã corruptæ barganiæ, scilt, qd' pdictus A. mutuo daret pfat Thome Woodhouse centũ libras, & qd' idẽ Thomas concederet al dit Anthony & ses hẽs le rent de 20 l. desouth condic̃; Que si le dit Thomas payet al dit A. 100 l. 17 Julii 1580. q̃ donqs le dit rent cessera; Sur q̃l corrupt agreemt, Thomas la adonqs receiva le dit 100 l. & la adonques grant le dit rent accordant 37 H.8.c.9. 13 El. c.8. Co. Lit.3.b.

dant desouth tiel conditiõ, come est avantdit, accordant al dit
agréemẽt: Qui quidẽ annuus redditus ꝓ p̄dict' 100 l. in forma
p̄dict' solubil' excedit scd̃m rat' 10 l. ꝓ 100 l. ꝓ uno anno, con-
tra formam statuti, &c. & convey un lease del t̃re al Pl' pur 21
ans. Et nota le distres fuit prise 27 Decembr̃ anno 33. p̄ 20 l.
arrere al Midsommer adonques pass, sur que lavowant de-
murr̃ en ley; Et Judgm̃t fuit done p̄ lavowant: Car com̃t
q̃ fuit object q̃ le Pl' en son barre al avowry ad alledge, que
le dit grant fuit sur corrupt contract encounter lestatute, & le
avowant ad demurr̃ sur c̃, ꝑ q̃ il ad confess touts matters
en fact, uncore pur ceo, q̃ sur le matter disclose en le barre,
appiert al court, que c̃ ne fuit un corrupt contract encounter
le dit statute, & issint son allegation de ceo repugnant al matt̃

1 Brownl. 124. Co. Lit. 72. a. Hob. 56, 164. 199. Cr. Arg. 10. Hutt. Arg. 57. 3 Co. 52. b. Doct. placit. 116.

mt̃e ꝑ luy mesme en son barr̃ al avowry, & un demurrer nest
pas confession des touts matters en fact, mes de touts tiels
matters en fait, queux sont bien & sufficientment plead; A
cest cause Judgm̃t fuit done pur lavowant: Et la cause q̃ ceo
ne fuit encounter lestatute de Usury fuit, q̃ riens fuit destre
pay ꝑ Thomas W. le grantor deins un an & un quarter apres
le grant fait, car deins le 17 jour de Julii 1579. & Christmas
1580. nul rent est limit destre pay. Et si le grantor ust
estre pay le 100 l. le 17 Julii 1580. le rent cesser̃ sans riens

1 Bulst. 36, 37. Cr. Jac. 253. 509. Cr. El. 27, 28. 1 Jones 410. Hard. 418. 1 Sid. 28, 182. Co. Lit. 3. b. Apres 70. b.

payer pur le dit 100 l issint que le Court dit, que ceo fuit
un plain bargain & purchase conditional de tiel rent, & nul
Usury. Fuit en election del grantor daver pay le dit 100 l.
& daver frustrate le rent, issint q̃ le grantée (come le nature
de usury est) ne fuit assured dascun recompence pur le for-
bearing de son 100 l. p̄ un an, & le dit rent de 20 l. ꝑ annum
nest q̃ penalty del grantor, & assurance pur le grantée pur le
payment del dit 100 l. Mes fuit resolve per le Court, que
si ad estre agrée enter le grantor & le grantée, que nient ob-
stant tiel power de redemption, que le 100 l. ne serra pay al
jour, & que le clause de redemption fuit insert a fair evasion
hors del statute, donques ceo ad estre usurious bargain &
contract deins le dit statute; Car si en verity le contract soit
usurious encounter lestatute, nul colours ou shadows des
parols voillont server, mes le party poit ceo monstre; & ne
serra conclude ou estoppe per ascun fait, en ascun auter matt̃
quecunq;, car lestatute done averrement en tiel case. Et Pop-

2 Anders. 15, 16. Apres 70. a.

ham Chief Justice dit, Si A. vient al B. a borrower 100 l.
accommoder ceo a luy, sil voile doner a luy pur le loan de ceo
pur

pur un an 20 l. si le fits de A. adonqs soit en vie, c est usury deins lestatute, car si c sert hors del statute p lencertainty del vie, lestatute serra de petite effect; Et p mesme le reason q il poit adder un vie, il poit adder plusors; Et issint semble a un Mathematical Line, que est divisibilis in semper divisibilia. Hard. 418. Cr. Jac. 209, 253, 508, 509. Cr. El. 643.

Pasch. xxxvii. Eliz.

Rot. 1915. In Communi Banco.

Clayton's Case.

INT Reighnolds Pl, & Clayton Def. en action de Det sur obligation de 60 l. le case fuit; Clayton request Reighnolds a lender a luy 30 l. & sur comunication inter eux, Reighnolds accomode a Clayton 30 l. 6 Decembr, anno 34 Eliz. jesq; al 2 jour de June prochein ensuant, a payer a luy pur le principal & loan de ceo 33 l. al dit 2 jour de June, si le fits del obligee adonques soit en vie, & sil moruit devant le dit jour, q adonqs il paiera a luy forsq; 27 l. que fuit 3 l. desouth son principal. Et fuit resolve per totam Curiam, q ceo fuit un usurious contract deins lestatute, accordant al opinion de Popham Chief Justice devant, & pur le reasons la rend per luy. Usura dicitur ab usu & ære, quasi usuæra, *id est*, usus æris; Et usura est commodum certum, quod propter usum

Co Ent. 168. pl. 42. 2 Anders. 15, 16. Moor 397.

1 Bulstr. 36, 37. Palm. 547. Moor 397. 2 Anders. 15, 16. Cr. Jac. 209, 252, 253, 508, 509. Co. Lit. 3. b. Devant 69. b. 1 Sid. 28, 182. 3 Inst. 151.

usum rei mutuatæ recipitur: Et ceo description accord ove cest Judgment; Car si sur le primer contract, cesty q accomodate reserve nul certain summe p le loan: mes secundario speret de aliqua retributione ad voluntatem ejus qui mutuatus est, hoc non est vitiosum. Vide Glanvil lib.7. cap.16. & lib.10. cap.1. q fuit lancient ley de cē tre cocernant Usury. Vide etiā Leges Sancti Edwardi, &c.

Pasch. xxxiv Eliz.

Rot. 275. In Det.

Hoe's Case.

(a) Cr.El.579,580. Gouldsb.166,167. &c. Moor 469.

IN Action de Det port p (a) Hoe en Bank le Roy, Phelix Marshal fuit bail p le Def. & puis devant ascun judgment done, le Pl release al Phelix touts actions, duties & demands; Et puis judgment fuit done vs le Def. & sur default del Def. Scire facias issuit vs Phelix Marshal, q plead le dit general release; Sur q le Pl demurre. Et fuit adjudge q cest (b) release ne barrera le Pl, car les pols del baily sont conditionalment, tessascavoit; Si contingeret pdict' defendente debit & dampn ill psat quef minime solvere, aut se prisonæ Mareschall ea occasione non reddere, &c. issint q ne poit ee per le dit bail ascun certain duty, tanq judgment soit done; car devant ceo nul poit scaver a quel summe le det & damages voile amounter, issint cesty que est bail pur le Defendant, nest pas lie en ascun certain summe al primes: Mes ses recognizans esteant general, serra reduce a un certainty per le Judgment, & nemy devant; Et p ceo est (c) diversity enter duty certain sur condition subsequent, car ceo poit estre release devant le jour del

(b) 2 Bulstr. 231, 286. Poph. 136. Goldsb.168.Moor 469. Winch 56. Cr.El.580. Cr.Jac. 171,401,451,623. 10 Co. 48. a. 51.a. Hutt.12,17. 1 Sid.141. Co.Lit. 265. b. 3 Cr.580. (b)1Rol.Rep.246, 311,386.

(c) 1 Co. 111. b. Co Lit. 274.b.

del ꝑformance del conditiõ, & un duty uncertain al primes & sur condition ꝓcedent dẽe fait certain aꝑs, c̃ en le mean tẽps, nest forsq; mere possibility, & ꝑ c̃ ne poit ẽe release, car cest recognizance ne create un duty maintenant, mes producera duty apres sur un contingent. Et nota, q̃ fuit adjudge Trin. 4 Eliz. Rot. 1207. in Com. Banco, q̃ ꝑ release de touts actions, suits & quarrels, un (a) covenant devant infreinder de c̃ nest pas release, ꝑ c̃ q̃ nest ascun cause daction, ne ascun certain duty devant linfreinder de c̃, mes linfreinder de c̃ covient ꝓcede lactiõ, & le cause del duty, & a cest cause tiel release ne fuit barre. Vide Dyer 5 Eliz.(b) 217. accord. Et vide Litt. en s̃ Chapt̃ de Garranty 170. q̃ ꝑ release de touts demands, un (c) garr̃ q̃ est covenant real (come la est dit) est extinct, uncore c̃ est executory & incertain, mes la le feoffee a q̃ le garr̃ est fait poit maintenant aver Warrantia Cartæ, & lier le tre ꝑ loco & tempore. Mes vide 35 H.8. Dyer f.57. q̃ ꝑ release de (d) covenants, le covenant est discharge devant linfriender de c̃, q̃l est prove per Littleton auxy f.170. &c. 16 E.3. Barre 245. Feme ad title de dower, & release a cesty en reversion, & puis tenant ꝑ vie surrend a luy, & semble bon barre, & uncore le feme nad cause daction vers cesty en le reversiõ al temps del release fait; Mes le reason est ꝑ c̃ q̃ la feme ad droit al tre, & cestuy en reversion ad estate sur q̃ s̃ release poit enure, & ꝑ recovery de dower s̃ estate sert charge, 21 H.7. le darrein case. Release en temps de (f) vacation al ꝑson discharge un annuity, ove q̃ le parson est charge, en respect del ꝑsonage. Vide 40 E. 3. 22. 18 E. 3. Avowry 77. 13 R.2. Avowry 89. 14 H.4.4. Recordare longe.

(a) 1 Co. 112. b. 8 Co.153.b.10 Co. 51.b.Co.Lit.291.b. 292.b. Cr.Jac.170. Moor 34. 2 Bulst. 231. Yelver. 156. Hutt.17.1 Anders. 8. Goldsb. 166, 167.

(b) 8 Co. 151. b. 153.b. 4 & 5 Eliz. Dyer 217. pl. 2. N.Bendl. 126. pl. 190. 1 Anders. 8. Co.Ent. 115. pl.5. Goldsb. 166, 167. Hutt. 12. Cr.Jac. 487. Yelv. 156.

(c) 1 Co. 112. b. 8 Co.154.a. Lit.§. 748.Lit.171.a. Co. Lit.392.b. Cr.Jac. 170.

(d) Popham 138. Hutt. 17. 1 Co. 112.b. 10 Co.51.b. Palm. 218. Yelv. 156. 2 Rol. 404.

(e) 1 Co. 112. b. 8Co.151.a.b.154.a. Co. Lit. 265. a. Doctrin.placit.149

(f) 21 H.7. 41. a. Br. release 33. Br. Dean & Chapt.11. 1 Co.112,b. Apres 81.b. 2 Rol. 340. Co.Lit.266.a.Fitz. release 57.

Trin

Trin. xxxiv Eliz.

In Bank le Roy.

Seintjohn's Case.

Cr.El.821, 822.

GArdener ad Judgmt en Bank le Roy vers un Seintjohn del County de Bedford, & avoit un Cap ad satisfaciendū vers luy, & obtain un garrant del viscount a un special baily p luy arrester, q̄ vient pres al meason del dit Seintjohn p arrester luy; & p c̄ q̄ il doubta de resistance, il port ove luy un Dagge; Et Seintjohn adonqs esteāt un Justice de Peace del dit County de Bedford, ayant notice de c̄, mand un de ses servants p luy, q̄ trovant luy arm ove un dagge, attach luy, & luy amesme devant le dit Seintjohn, esteant le prochein Justice de Peace; Le q̄l sur examinac̄ del matter luy cōmit al prochein gaol, la a demurr jesqs il ad pay 10 l. lun moiety al Roign, & laut moiety al Informer, solonqs le statute de 32 H.8. cap.6. q̄ prohibit le shooting in, or carrying &c. dascun Handgun. Et fuit objec, q̄ un dagge ne fuit deins cest parol Handgun; Car fuit dit, que Dags ne fueront en use al temps del feasans del dit act, mes invent puis, & comt q̄ sont use ove le hand, uncore nest conus p le nosme de handgun, nient pluis q̄ Hagbut ou Demyhake, q̄ux auxy suer use ove le hand, mes nient obstant sont conus p pticular nosmes, & ne sont cōprehend deins cest pol (Handgun,) car ils sont particularmt nosme ove le handgun en lestatute. Issint un dagge est distinguish per especial nosme a un handgun, pur que pur ambideux ceux reasons, 1. Que ne fuit in use al temps del feasans del act. 2. Que fuit conus p un especial nosme. Fuit object, que cest carrying del dit dagge, ne fuit deins le dit act. Mes fuit resolve p tout le Court, q̄ fuit deins le dit statute,

&

& comprehend deins cest pol (Handgun,) car coment q nul gun fuit conus p le nosme dun dag al temps de feasans del dit act, & coment en comon parlans un dag est conus p special nosm, uncore entant q cestuy q fist le dag, ad son invention de le Handgun, & nest dascun novel kind en substance, mes ad solement un petit alteration en form & quality, a cest cause c est comprehend deins cest pol (Handgun,) car si petit alteration ou addition defeteira le penalty del act, le stat serra de petit effect. Et ad ee explain p divse proclamations, q pistols, dags, &c. fuer deins le dit act. Et fuit dit, q lou le dit act prohibite. Crossbows, p c Stonebows sont auxy prohibite, causa qua supra. Et le preamble del dit act parle del petit handgun. Mes fuit resolve, q p auk cause q le carrying de cest dag, ne fuit prohibite p le dit act, car le viscont, ou ascun de ses ministers p le melior execution de Justice, poient porter ove eux handguns, ou auks weapons invasive ou defensive, & c nest restrain per le general prohibition del dit act. Vide 3 H.7. f.1.a.

Cr. El. 822.
Hard. 484.
3 Inst. 160.
Cr. El. 822.
Cr. El. 822.

Mich.

Mich. xxxiv & xxxv Eliz.

In Bank le Roy.

William's Case.

Salop'. Cr. El. 664. 1 Rol. 110.

THomas Williams Arm̄ port Action sur le Case en Bāk le Roy vs Henry Jones Clark; Et count lou le dit Henry esteāt Vicar de Alderbury in Com̄ p̄dict' doit, & est oblige p soy m̄, ou p un aut Chaplein, a celebrater Divine Service al Wollaston en son Chappel de S. John, deins le scite & precinct de son manor de Wollaston avantdit, & deins le Parish de Alderbury avantdit, la dancient temps erect, chescun Sonday p annum, & chescun Festival jour per annum, devant merdie de m̄ les jours, & de administer les Sacram̄ts al dit Thomas, hoībus, tenentibus, & servientibus suis infra præcinctū ejusdē maūii inhabitañ & commorañ. Idemq; Henricus Vicarius & oēs p̄decessores sui vicarii Eccl'iæ Parochialis de Alderbury p̄dict', a tempore cujus contrarii memoria hominū non existit, p seipsū vel hm̄odi Capellanū ad celebrandū divina servitia in forma p̄d' in Capella p̄d', ac sacram̄t' & sacram̄talia p̄fat' Thomæ Williams & antecessor' suis, ac omnibus illis quorū statū idē Thomas modo habet, ac hoībus, servientibus, & tenentibus suis infra dictū scitū manerii p̄d' commorantibus, p totū annū ministrand' vel administratur annuatim exhibere & sustentare consueverunt. Prædict' tamen Henricus Jones nunc vicarius Eccl'iæ Parochialis de Alderbury p̄dict' p seip̄m vel hm̄odi Capellañ divinū servitiū in capella p̄dict' in forma p̄dict', ac ad sacram̄ta & sacram̄talia eidē Thomæ ac hoībus, servient' & tenent suis ibm̄ in forma p̄dict' ministrand' licet sæpius requisit', per magnum tempus, videl't, a Festo Pentecoste ultim̄ p̄terit ante exhibitionē hm̄odi billæ, usq; exhibitionē hm̄odi bill' exhibere & sustentare recusavit, unde dic qd' deteriorat est, &c. Et le Def.

Def. plead non culp, & fuit trove culp: Et apres divers motions in arrest de Judgmt, & le matter bien debate al Bench; al darrein fuit resolve per Popham Chief Justice, & totam Curiam, q en cest case, action sur le case (a) ne gist, mes le remedy que le Pl' ad est a suer in Court Christian: Mes si le Chappel ust estre (b) private solemt pur luy, & ses servants & family deins le dit Manor, la, private action sur le case sur prescription, sert maintenable p le Snr del Manor, &c. Car en tiel case il m solemt (& nul de son family) avera laction, & comt q Divine Service soit spirituel, uncore intant q ceo p prescription appent a private person, & destre celebrate p son ease deins son Manor, q serra intend a commencer al primes p grant; a cest cause p non feasans de cest spirituel chose, action sur le case gist, & damages sert recover pur eux; & ove ceo accord 22 H. 6. f. 46. in le Prior de (c) Wooburns Case. Mes qnt le Chappel nest (d) privat a luy & a son family, mes publique & common a touts ses tenants de m le Manor, que poient estre mults & de grand numbre, la nul action sur le case gist pur le Snr, car donques * chescun de ses tenants purr auxy aver action sur son case, cibien come le Snr m & issint actions infinite pur un default, Et (e) boni Judicis est, lites dirimere, & (f) expedit reipublicæ ut sit finis litium propter communem omnium utilitatem, & uncore ils ne sert sans remedy en tiel case, car come ad estt dit, ils poient & doient suer pur tiel default in Court (g) Christian, & la c sert redress, & ove ceo accord Lit. lib. 2. cap. Frankalmoign 30. b. Vide || 27 H. 8. 27. a. home navet action sur le case pur nusans fait (h) in haut chemin, car cest common nusans; & donques nest reason, q un particular person ait action: Car per mesme le reason que un person avera action pur ceo, per mesme le reason chescun poit aver action pur ceo, & donques il serra puny 100 foits pur un mesme cause; Mes si ascun (i) particular pson, apres p le nusance fait, ad pluis pticular damage q ascun auter, la pur cel pticular injury, il aba pticular action sur le case. Et p common nusances q sont equal a touts les lieges le Roy, le common ley ad appoint auter Courts pur correction & reformation de eux, s. le Tourns, Læts, &c. (k) 5 E. 4. 2. b. acc'. Vide 2 E. 4. 9. a.

(a) 3 Keb. 428. 9 Co. 112. b. Cr. El. 664. 1 Rol. 110. 1 Sid. 34.
(b) 1 Rol. 110. Lit. Rep. 95.
(c) 22 H. 6. 46. b. 47. a. Fitz. Action sur le case 12. Br. Action sur le case 61. Br. Jurisdiction 43.
(d) 1 Rol. 110. Lit. Rep. 95.
* 2 Sid. 174.
(e) 4 Co. 15. b. 5 Co. 31. a.
(f) 8 Co. 37. b. 98. b. 6 Co. 7. a. 9 Co. 79. b. Co. Lit. 103. a. 2 Inst. 411. 11 Co. 69. a. 3 Bulstr. 98. Hard. 128. Godb. 242.
(g) Lit. Sect. 136. Co. Lit. 96. a. Br. Action sur le case 6.
|| 2 Rol. Rep. 26. Br. Action sur le case 6. Br. Chimin 1. Br. Nusans 1. 9 Co. 112. b.
(h) Co. Lit. 56. b. 1 Rol. 88. Cr. El. 664. 2 Jones 157. Moor 180. 9 Co. 113. a.
(i) Co. Lit. 56. a. Cr. El. 664. Cr. Jac. 446, 470, 491. Noy 120. Moor 180. 9 Co. 113. a. Apres 104. b. 2 Rol. Rep. 26. Br. Action 6.
(k) Cr. Car. 185. Br. Action sur le case 93. Br. Nusance 29. 9 Co. 112. b.

Paſchæ xxxv Eliz.

In Bank le Roy

Caſe de Orphans de Londres.

2 Rol.313. 2 Inſt. 660. March 107. 4 Inſt. 249.

NOta, fuit reſolve p totam Cur, q̃ ſi aſcũ Orphan de Londres, q̃ eſt per le Cuſtom de Londres deſouth le governmt del Major & Aldermen del dit City, ſua en le Eccleſiaſtical Court, ou en le Court de Requeſts, &c. p̃ aſcun biens, argent, ou chateux due a eux, ou p le Cuſtõ de Londres, ou p aſcun deviſe ou legacy in le volunt lour anceſtor, ou p̃ aẽ account; q̃ ꝓhibition giſt, p̃ c̃ q̃ le governmt de Orphans de Londres apperteint al Major & Aldermen de London, & ils ont juriſdiction de eux. Et Popham Chief Juſtice dit, q̃ ſi Sñr dun Manor ad ꝓbate de teſtamts deins ſ̃ Manor ſi aſcun tiel volunt ſoit dẽe prove en le Eccleſiaſtical Court, Prohibition giſt, p̃ c̃ q̃ le juriſdiction de c̃ appent al aur, ou autermt le party poit aver double vexation & trouble. Et jeo ay vieu 2 preſidẽts de Prohibitions grantes ſur le dit Cuſtom des Orphans de Londres.

2 Rol. 313. 5 Co. 16.a. Caudries Caſe

Mich.

Mich. xxxv & xxxvi Eliz.

In Bank le Roy.

Wymark's Case.

Abel Dun port Ejectione firmæ vers William Law, & count dun lease fait per Richard Sleford, 9 Novembris 34. de un mease, &c. en Northluffenham en Com̄ de Rutland, pur trois ans. Le Defendant plead que ante prædict' tempus, quo, &c. le dit Richard Sleford fuit seisie in fee des tenem̄ts avantdits, & 9 Maii anno 32 Reginæ, p son fait indente & inrolle deins 6 moys solonqz lestatute, Quod quidem scriptum indentatum hic in (a) Curia profert, &c. bargain & vend mesme les tenements al Edward Wymark Gent. in fee; per que & per force del Statute, il fuit seisie tanqz per le dit Sleford disseisie, q̄ fist le lease en le count mention, sur que le Defendant p le commandment de Edward Wymark, enter, &c. a q̄ le Plaintiff reply & confesse le bargain & sale per le dit fait inrolle al dit Wymark, Modo & forma, prout, &c. Et idem Abel ulterius dicit, quod in eodem scripto indentato, provis. existit modo & forma sequentibus, videlicet quod si prædictus Edwardus Wymark, &c. ne paiera 300 l. 2 Novembris, 1592. al Sleford, &c. q̄ donques le dit bargain & sale serra void; & monstre le breach del condition, & reentry; & le lease fait al Plaintiff, & le ejectment, prout in le count, sans ceo que le dit Sleford disseisie le dit Edward Wymark, &c. sur q̄ le Defendant demurr̄ in ley, Et monstre cest cause solonqz lestatute, (b) pur ceo q̄ le Pl' in son replication ne monstre avant le fait indente, q̄ comprehend le dit condition. Et apres bon debate & consideration del matter in ley, fuit adjudge pur le Plaintiff. Et in cest case deux points fuer resolve p Popham Chief Justice, & totam Curiam,

Co. Ent. 190. pl. 4. 1 Rol. 751.

(a) Lane 32.

(b) 10 Co. 94. a. b. Co. Lit. 72. a. 27 El. cap. 5.

¶ 1. Quant ascun fait est m̃re al Court, le fait per Judgm̃t del ley remain en Court (a) tout le Term, en q̃ ceo est monstre, mes al fine del Term, si le fait ne soit denie, donques le ley adjudge ceo destre en le custody del party a q̃ ceo appent, Car tout le Term in ley nest q̃ un (b) jour, & pur ceo serr̃ intend a remainer in Court tout le Term en q̃ ceo est monstre; mes quant le Term (c) est close & finy, donques la est nul officer in tiel case, a q̃ le custody & charge de c̃ p le ley appent, & p̃ c̃ le party q̃ c̃ monstre, av̄a le custody de ceo: Car les evidences dun home sont come les (c) sinews de son terre. Et ou appiert per 38 H. 6. 2. a. b. que pur ceo q̃ le fait en auter Term est en le custody del party, & nemy en Court, le Def. navera (d) oyer de ceo, & ove ceo accord, 4 H. 7. 18. & 21 H. 7. 30. b. Auxy vide Littleton f. 88. b. si le tenant in Assise plede feoffm̃t p fait pol del Plaintiff, & monstre ceo al Court, in cest case (Lit. (e) dit) q̃ intant q̃ le fait est in Court, le feoffee poet m̃re al Court coment in le fait sont diverse conditions, &c. mes ceo est destre entende, q̃ il prendra advantage del condition in le fait in m̃ le Term q̃ c̃ fuit plead & monstre avant. Et ove ceo accord 24 E. 3. 73. b. que quant un fait est in Court, un aut̃ poit prender benefit de c̃ sans c̃ av̄ in poine, 38 E. 3. 8. a. & 40 Ass. pl. 34. acc̃, & in 45 E. 3. tit. Feoffm̃ts (f) & faits. En Assise v̄s plusors tenãts, ascun plede quant a un parcel le fait del ancestor del Pl' a eux m̃ ove garr̃ monstre al Court; & ascun aut̃s des tenants, q̃nt al aut̃s parcels plead in barr̃ p m̃ le fait sans aver c̃ en poine, & ceo fuit challenge, pur ceo q̃ le fait doit estr̃ m̃re le Court devers un, les auters ne purr̃ my aver advantage de m̃ le fait sans c̃ m̃re, & non allocatur. Nota quant le fait est per un m̃re al Court, c̃ nest respective q̃nt a luy, mes touts aut̃s prenderont ent advantage. 21 E. 4. 49. a. in Labbot de Waltham's Case, si Letters (g) Patents sont inrolle in ascun Court de Record, un poit eux pleader in m̃ le Court, sans eux m̃re, nient obstant q̃ eux ne fuer̃ plead devant: Et diversity fuit prise int̃ Letters Patents, ou aut̃s matters de record q̃ de lour nature demesne sont de record, & matter en fait: Car coment q̃ un fait soit enrolle en Court, (h) un ne poit c̃ pleader en m̃ le Court sans c̃ monstre. Vide 19 H. 6. f. 6 b. 19 E. 4. 9. b. 22 H 8. tit. Record Br. 65. Mes si fait plead & m̃re avant, soit (i) dedit, donques ceo remainer̃ en Court touts jours, car si ceo serr̃ trove nient son fait, ceo serr̃ (k) damne. 41 Ass. pl. 29. 12 (l) H. 4. 8. a. b. 7 H. 4 (m) 39. b. 11 H. 4. (n) 73. b. 45 E. 3. 11. a. Et si fait soit dedit en un Court, p que

(a) Co. Lit. 231. b. 8 Co. 156. b. 157. a. Apres 76. b.

(b) 4 Co. 71. a. Godb. 433.

(c) Co. Lit. 231. b. 1 Co. 1. b. 9 Co. 17. b. 11 Co. 50. b.

(d) Doctrin. placit. 271. Goldsb. 150. Br. Laches 17. Br. Oyer de Records, &c. 16. Br. Continuance 74. Fitz. Monstrans de faits &c. 98.

(f) Fitz. Feoffments & faits 55.

(g) Br. Monstrance de faits, &c. 124. Br. Pleadings 110. in fine. Palm. 87.

(h) Br. Monstrance de faits 123.

(i) Co. Lit. 231. b.

(k) 6 Co. 45. b.

(l) Fitz. Monstrance de faits 129. Br. Monstrance de faits 38. Br. Faits 20.

(m) 6 Co. 45. b. Br. Faits 16.

(n) 6 Co. 45. b. Br. Faits 19. Br. Obligation 22.

(o) 6 Co. 45. b.

que ceo la remain, cest fait poit estre (a) plede en auter Court, sans ē mře, 12 (b) H.4 8. a.b. & 43. E.3 27.a.acc: car (c) lex non cogit ad impossibilia. Nota bon case en 42 E.3.18.a. ou le case fuit, q̃ (d) feme sole fait lease pur vie, le lessee fait wast, le baron release & deliver le fait in owel main destre deliver al Def. sur certain conditions performeř, le Def. perform les conditions, le baron happa le release, & detain ceo de lessee, & il & sa feme port action de wast, le lessee sur cest special matter pleadeř le release sans ceo mře avant. Vide 10 E. 3. 40. a. si baron & feme sont implede in un real action, ou la default la feme est le default dambideux, si le dd̃ant prist la feme del ten̄ de luy, ceo ne turnera le tenant a un default. Issint in Dower, detinue de Chřes, &c. p le dd̃ant est bon plea, 20 H. 7. 5. tenant p statute merchant ou staple, &c. ne mřa fait, car il vient al possession del terre p proces de (e) ley, mauger le volunt de cesty q̃ ad le fait, & nad mean a ven̄ a ceo: Auterm̃t dun lease pur vie ou ans, &c. p̄ ē q̃ il vient eins per le lessor, & poit aver prise un covenant, ou auter security pur son peaceable enjoyer del terre a luy demise. Et in case quant le fait est (f) dedit, le ley q̃ ad appoint le fait a remainer in Court, ad auxy appoint un officer daver custody de ceo, & ceo est Custos (e) Brevium, come appiert en Fitz. Nat. Br. 243. l.

¶ 2. Fuit resolve, que le course del Bank le Roy est, q̃ com̃t q̃ le Pl' apres le barre plede, ad jour de reply 2 ou 3 Terms apres, nul mention serř fait in le rolle dascun imparlance ou continuance, mes quant il reply, lentrie serř ut supra, Et prædictus Abel dicit quod ipse p aliqua per ipsum Willielmum superius placitař ab actione sua p̄cludi non debet, &c. Mes auterm̃t est de un barre la, car ceo contein le imparlance ou continuance, & est en tiel form: Et modo ad hunc diem, scřt, diem Veneris, &c. isto eodem termino usque quem diem prædictus Willielmus habuit licentiam interloquend'; mes nul tiel entrie est fait sur ascun replication, rejoinder, &c. p que ils serř intend, quant ils sont generalm̃t enter de record, q̃ ils fuer fait en m̃ le Term, en que le barre, &c. fuit plede, & per consequence le Pl' in le case al barre poit prender advantage del condition comprise en le fait mře avant per le Defendant.

(a) Co.Lit.231.b.
(b) Fitz. Monstrance de faits 129. Br. Monstrance de faits 38. Br. faits 29.
(c) Co. Lit. 92.a. 231.b. Hard. 387.
(d) Statham wast 5. Fitz. Brief 554. Fitz. Monstrance de faits 139.
(e) 10 Co. 94. b. Cr. Car. 209, 442. Cr. Jac. 209, 317. Co. Lit. 225. b.
(f) Co.Lit.231.b.
(g) F.N.B. 243. l. Co. Lit. 231. b.

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In Communi Banco.

Clifton's Case.

EN Brief de Waste inter Sir Thomas Southcote Armig̃ Pl', & John Clifton Def. le form del Brief fuit tiel. Si Thomas Southcote Armig̃ fecerit, &c. summon Johannem Clifton qd' sit, &c. quare cum, &c. idem Johannes de terris, domibus, boscis & gardinis in Otterie, quæ tenuit ad vitam Margaretæ, nuper uxor suæ, in jure ipsius Margaretæ, de p̃fat Thom, ex dimissione quam idem Thomas inde fecit p̃fat Margaret, & cuidam Petro Carew Militi quondam viro suo, ad vitam eorumd' Petri & Margaretæ; fecit vastum, venditionem & destructionem, ad exhæreditationem ipsius Thomæ, & contra formam provisionis p̃dict', ut dicitur, &c. & habeas, &c. Teste 8 Febr. anno 35. Et fuit resolve per tout le Court in le Common Bank, q̃ le dit bre ne gist: Car le recital del bre est, Quare cum de communi consilio Regni nostri Angliæ provisum sit, quod non liceat alicui, vastũ, venditionem, seu destructionem facere de terris, &c. sibi dimissis ad terminum vitæ, vel annorum, &c. Et en cest case, le Baron navoit ascun estate pur vie en cest terre, mes la feme ad lestat pur vie, & le Baron navoit forsq; in sa droit, & issint il nest deins le dit act; Et pur ceo, (a) si feme tent pur vie, prist Baron que fait wast, & la feme morust, la Baron est dispunie pur cest wast. Nota Lecteur, cest Judgment done sur consideration del statute de Glouc̃ cap. 5. & des opinions obiter in 10 H. 6. 11. & 12. per Strange & Cottesmore. 46 E. 3. 25. 46 E. 3. tit. Wast in Statham.

(a) 1 Rol. 351. 2 Rol. 827, 833, 834. Cc. El. 357. 2 Inst. 301. Co. Lit. 54.a. Co. Ent. 703. pl. 9. 707. b.

Pasch. xliii Eliz.

In Bank le Roy.

Pilkington's Case.

Enter Pilkington (a) Pl', & Hastings & auters Def. en Repl'; Fuit resolve p totam Curiam, que quant un distress est prise p damage fesant, q le party poit tender amends, jesques les avers sont (b) impound, mes apres q ils sont in custody del ley, donques le tender vient trope tarde. Vide 13 (c) H. 4. 17. & 27 E. 3. 88. Et issint fuit adjudge Trin. 33 Eliz. inter Nevil & Segrave. 2. Fuit resolve, q tender del amends al Bailee (e) ne vault, car il ne poit deliver le distress un foits prise, nient pluis q il poit changer labour son Master, ou demand rent sur un condition de reentry.

(a) Co.Ent.602.pl. 17. Cr. El. 813. (b) Cr.El.332,813. 8 Co. 147.b. Hetl. 16. 1 Brownl.173. 2 Inst. 107. Lit. Rep. 34. (c) Cr. El. 813. (d) Cr.El.332,813. 1 Rol. Rep. 258. (e) Cr.El.813. Cr. Jac. 377. 1 Rol. Rep. 258. 2 Rol. Rep. 172. Hob. 154. 1 Brownl. 173

Mich. xxxv & xxxvi Eliz.

In Bank le Roy.

Countee de Pembrook's Case.

In Action sur le case port per le County de Pembrook, vers Sir Henry Barkley, pur interrupting luy de certain walks in le Forest de Selwood. Le Defendant plead grant de eux per le dit Countee, al Seignior Maurice Barkley in tail, per fait cy mre avant: Fuit tenus p Popham Chief Justice,

Cr. El. 384, 486, 560. 2 Anders. 20. Goldsb. 130. Poph. 116. Hardres 49. Moor 706.

Devant 74. b. Doct. placit. 118.

Justice, & totam Curiam, que in m̃ le Term le Plaintiff poit prier que le fait soit enter in hæc verba: Et puis il poit demurrer, ou prender issue a son pleasure, mes in auter Term le fait ne serra a son prier enter in hæc verba, coment q̃ il voit demurrer sur ceo, Car donq̃s le fait est hors del Court, & puis q̃ le fait sur le prier en m̃ le Term fuit enter in hæc verba, le Countee plead, q̃ ulterius per scriptum prædictum provisum fuit (sans monstre avant dascun part) pur ceo que le fait fuit enter in hæc verba, quod nota bon policy, & le Countee mẽe le condition, & le breach de ceo: Nota bene.

Mich. xxxv & xxxvi Eliz.

In Communi Banco.

Paget's Case.

(a) 2 Co.92.b. Cr. Jac. 688. 10 Co. 44.b. 11 Co.81.b. Allein 82. 1 Jones 51. F. N. B. 58.c. 59.h. 50 E.3. 4.a. 1 Rol.377. 2 Rol. 119, 829. 2 Inst. 301.Lit.Rep. 256. Winch 79. Moor 18. Co.Lit. 54.a. 299.b. Vide (b) *Herlakynden*'s Case in le 4 part de mes Reports acc'. *Lewis Bowl*'s Case, 11 Co. 81.b.

(b) 4 Co. 62, 63.

(c) 4 Co. 62. b. 11 Co. 48.b. 81.b. Cr. Car. 242, 243, 274. 2 Rol. 119. O. Benl. 113. Palm. 327. Moor 19. 1 Rol. Rep. 181. 10 H. 7. 2. b.

Enter William Paget Armig̃ Quer, & Edward Cary & Elizabeth sa feme Defendants in Wast; En le Common Bank fuit resolve; que si (a) tenant pur vie, soit le remainder pur vie, le remainder in fee, si tenant pur vie fait wast in Arbres, & puis cesty in le remainder pur vie morust, que laction de Wast est bien maintainable pur le Wast fait in le vie de cestuy en le remainder pur vie: Car c̃ fuit al disinheritance de cestuy en le remainder en fee, & ore le impediment (que fuit le mean estate pur vie est tolle) Et remoto impedimento emergit actio. Et come fuit la dit, issint fuit adjudge en anno 9 Eliz. Reg. Mesme la ley si cestuy in le rem̃ pur vie apres le Wast surrender son estate a cestuy in le rem̃ ou reversion in fee. Et ou fuit object, q̃ al temps del Wast, ceo ne poit estre al damage de cesty in remainder in fee, in respect de mean estate p̃ vie; A c̃ fuit rñde & resolve, quant le arbre est sever le (c) property de c̃ appẽt a cestuy in rem̃ in fee, & issint ou est dit in ascun liures, que cestuy en remainder

ou

ou reversion en fee, navera (a) action de wast, est destre intende, durant le continuance del mean remi; & ou en auters liures est dit, q̃ in tiel case action de waste gist bien, ceo est destre intende apres le mort de cestuy in remainder pur vie, Quia cum aliquid impeditur propter unum, eo remoto, tollitur impedimentum: Et issint touts vse liures sont bien reconcile. Vide 11 E. 3. tit. Resceit 118. 4 E. 3. 18. b. Cotts Case. 33 E. 3. Waste (b) 114. 5 E. 3. 3. 10 E. 4. 9. a. F.N.B. (c) 58, 59. & le vse en le Register, f. 74. b. & le nota la, f. 75.

(a) 1 Rol. 377.

(b) 33 E. 3. Fitz. wast 144.
(c) F.N.B. 58. c. 59. h.

Trin. xxxvi Eliz.

Rot. 1546. In Communi Banco.

Booth's Case.

George Booth port action de Waste vers Skevington. Et count que Sir William Booth demise pur ans al Ensor, que ceo assigne al Skevington. Le Defendant plead assignment al Elizabeth Cave, devant quel assignment nul wast fait. Le Plaintiff in son Replication monstre lestatute de 11 H. 6. cap. 5. & que le grant al Elizabeth Cave fuit al intent, quis ils ne sachera vers que a porter son Action de waste, & averre que il prist les profits. Le Defendant rejoyn que Elizabeth Cave grant son estate al A. que demise al Def. a volunt, sans ceo que il grant al intent, &c. sur que le Plaintiff demurr en ley. Et en cest case trois points fuer resolve. ¶ 1. Que coment que les parols del dit act sont, que ou tenant pur vie ou ans ont demise ou grant lour estate, al intent que ceux en reversion, s. lour lessors, lour heirs ou assigns, ne scaver lour nosmes, & puis les primer tenants continuelment occupy ceux terres, &c. & font waste, &c. est ordeine & establ y, que cestuy in reversion

Co. Ent. 697. pl. 5. 2 Anders. 23, 24, &c. Co. Lit. 54. a. 2 Inst. 302.

F. N. B. 59. e.

(a) 2 Rol.Rep.246 F. N. B. 59.c. Co. Lit. 54. a. 2 Inst. 302. Lit.Rep.106. (b) Co. Lit. 54. a. 2 Rol. Rep. 246. (c) Doctrin. placit.354.Cawly 35.

version (a) in tiel case maintenera un bre de Wast envers les dits tenants pur vie ou ans, & la est proviso pur le primer tenants. Uncore fuit resolve, que chescun assignee del primer lessee mediate ou immediate est deins le dit Act, Car lestatute fuit fait a suppresser fraud & disceit, & pur ceo serra prise benficialment. ¶ 2. Fuit resolve, que cestuy en (b) remainder est deins le dit act, cibien come cestuy en reversion; Car en owel mischief; uncore le preamble & le corps del act aury parle solement de cestuy in le reversion. ¶ 3. Fuit resolve, que (c) lentent avantdit ne fuit traversable in cest case, mes le pernance des profits, car ceo fuit chose notorious, dount le pais poit aver conusans, & en le pernance des profits, lentent est imply. Vide 4 H. 7. 9. a. en Formedon le tenant plead non tenure, le demandant dit, que il fist feoffment aux persons disconus pur defrauder luy de son tenancy, & prist les profits; Le pernance des profits, (d) & nemy le feoffment est traversable. 4 E. 4. 29. a. & mults auters liures acc.

(d) Doctrin. placit. 346, 350. Br. Parnor de profits 18. Br. Traverse per, &c. 180. Br. Peremptory 40. Fitz. Maintenance de Brief 38. (e) Fitz. Maintenance de Brief 33.

Trin. xxxvi Eliz.

Rot. 877. In Bank le Roy.

Samon's Case.

1 Rol. 243. Co. Ent. 3. pl. 4. Cr. El.432. Moor 359 Lit. Rep. 30.

SAmon port Action sur le case sur Assumpsit, & count, que lou controversies fuer inter le Plaintiff & Defendant concernant diverse terres en D. Le Defendant in consideration de 6 d. assume & promise a paier 200 l. al Pl', si le Defendant ne performa lagard de J. S. &c. le quel J. S. fist un agard, que le Defendant enter in un obligation al Plaintiff, que le Plaintiff & Elizabeth sa feme ensoyer les dits terres, &c. le quel il nad fait, sur que le Defendant demurre. Et fuit adjudge encounter le Pl'. Et le reason & cause del Judgment fuit, pur ceo que lagard fuit void pur le non certainty,

(a) certainty: Car nappiert de quel somme le bond serr, car les arbitrators sont Judges del case, & lour Judgment & agard doit estre certein, issint que per ceo, le controversie soit decide, & que ceo ne serra pur lencertainty cause de novel controversie; Et les arbitrators ne poient (b) assigner lour power ouster, mes eux mesme doient determine ceo, & pur ceo neque le Plaintiff, neque le Defendant poient assesser le somme; Mes fuit agrée, si J. covenant ove B. de enter en un bond a luy pur enjoyer de tiel terre, & ne expresse quel somme, il serr tenus in tiel somme, que amount al (c) value de terre; come est agrée en 10 E. 3. si home grant annuity al un de 10 Marks, tanque il soit promote a un convenable benefice, le ley expoundera c̄ destre del value del (d) annuity ou pluis; mes le reason de ceo est pur ceo que ceo est lact del covenantor mesme que ne poit estre void, mes auterment in le case al barre. Auxy le agard fuit void quant al feme, car el fuit (e) estrange al submission.

(a) Cr. Eliz. 432. Moor 359. Hardr. 45, 46. Styles 56. 1 Rol. 263. Jenk. Cent. 340. March Arbitrament 163, 164, 192. 2 Rol. Rep. 214. Palm. 84, 146. Yelv. 98. Cr. Jac. 314, 315.
(b) Cr. El. 432.
(c) Cr. El. 432.
(d) Cr. El. 432.
(e) 1 Rol. 243, 247, 259. Cr. El. 4, 432. Moor 3, 359. Cr. Car. 226. 1 Rol. Rep. 270. Kelw. 43 a. 3 Leon. 62. 2 Sand. 293, 337. Hutt. 9. Hardr. 46. Yelv. 98. Hetley 5. Styl. 39. Godb. 12, 13. 10 Co. 131. b.

Hill.

Hill. xxxvii Eliz.

Rot. 601. In Bank le Roy.

Gray's Case.

Co.Ent. 573. pl.4. Cr. El. 405, 546. Cr. Car. 533. Cart. 88. 1 Rol. Rep. 121,123. Lit.Rep. 295. 1 Sand.320.

IN Repl' inter Gray & Fletcher, en barre del Avowry pur damage feasant, le Plaintiff per custom entitle luy m̄ daver common de pasture in le lieu, ou, &c. a son Copyhold; le quel custom fuit travers. Et trove fuit q̄ il doit aver m̄ le common, mes que chescun Copyholder ad use de paser, de temps dont, &c. Pro eadem communia unam gallinam & quinque ova annuatim. Et fuit adjudge q̄ sur cest verdict le Plaintiff avera Judgment. Car le Plaintiff ne besoigne a m̄re pluis q̄ fait pur luy, & que est de son part. Et le doubt fuit q̄l remedy le terre ten̄ averoit pur les hens & eggs. Car si le terre ten̄ nad remedy pur eux, donques le cōmoner avera son common sub modo, s. payant tant, &c. & donq̄s ceo serra encounter le Pl'. Mes si le terre ten̄ ad bon remedy pur les hens & eggs, donques come le verdict est trove, ceo nest modus communiæ, s. un manner de cōmoning, ne parcel del issue quant al common, mes collateral recompence destre pay pur le common, dont chescun ad owel remedy. Et Popham Chief Justice dit, q̄ fuit adjudge in un Devonshire Case, q̄ ou home prescribe daver pot-water hors de river, &c. & le jury trove q̄ il doit c̄ aver payant 6 d. annuelm̄t: Et fuit adjudge que il ad fail del prescription. Car il ad prescribe absolutement, & le Jury ad trove ceo conditionalment, ou sub modo, & la si ne paia les deniers, il ne doit prendre le Ewe, & le terre ten̄ in tiel case poit luy disturbe, q̄ est tout le remedy q̄ le terre ten̄ ad. Mes in le case al bark le terre ten̄ poit distrein les

Cr. El. 405, 563. Doctrin.placit.103 Hob. 42.

Cr. El. 405. Hob. 42. Doctrin.placit. 103. Godb. 238. Winch. 22.

les avers del commoners sur son terre demesne pur les hens & eggs, & ove ceo accord 26 H. 8. 5. Mes en le case al barr, si le Jury ad trove q le Pl' avera common payant tants des hens & eggs, lissue ad estre trove vers luy, pur ceo que est parcel del custom: Mes en le case al barre, le custom quant al commoning est perfect, sans le dit payment, & le payment ne limit ou qualifie le custom, mes ceo est recompence pur le common, pur quel recompence le terretenant ad remedy: Mes si le terretenant nad remedy pur le recompence, come en le case mise per le Chief Justice, mes solement a faiz le dit disturbance, come est avantdit, donques le dit manner de payment (coment que soit trove come ceo est en le case al barre) est parcel del custom. Nota bon diversity. Et autiel Judgment fuit done in Communi Banco Pasch. 37 Eliz. Rot. 723. inter Lovelace & Reighnolds, quod vide la. Vide 10 E. 4. 17. Fitz. Nat. Br. 107. a. 15 E. 3. tit. Assise 111. Cr. El. 546. Cr. El. 546, 563. 2 Anders. 67, 68.

Pasch.

Pasch. xxxvii. Eliz.

In Bank le Roy.

Fitzharbert's Case.

Le case en effect fuit; Tenant pur vie, le rem̃ a son fits & heir apparent en tail, per covin & agreement enter luy & A. & B. al entent de barr̃ son fits de son rem̃ per un collateral garr̃, fait lease pur ans al A. q̃ fait feoffm̃t en fee al B. a q̃ le pere release ove garranty, & tout ceo per covin & consent inter les parties, al entent avantdit; Et puis le pere morust, & le garr̃ discend sur le fits adonques esteant de plein age. Et fuit resolve p Popham Chief Justice, & tout le Court, que cest garr̃ ne barr̃ le fits, car le feoffment de le lessee pur ans est disseisin, & le pere m̃ est particeps criminis, & agreant a ceo; & donques com̃t q̃ le release ove garr̃ est fait apres le disseisin, uncore entant q̃ le disseisin fuit a tiel entent & purpose, le ley adjudgera sur lentier act; come est agree in 19 H. 8. 12. b. si home disseisist auter al entent a faire feoffment ove garr̃, coment que il fait le feoffment 20 ans apres le disseisin, uncore le ley adjudgera sur lentier act, & le disseisin & le garr̃ serra accouple ensemble, solonq̃ le entent del parties, & pur ceo en tiel case le ley adjudgera le garr̃ a commencer per dissesin, coment que ils sont fait a several temps: Come si home fait lease des terres en deux several Counties, reservant un entier rent, com̃t q̃ le livery soit fait a several temps, primerment en lun County, & donques en lauter, uncore le rent est issuant hors des terres en ambideux Counties. Issint si home fait Chre de feoffment de certain terre ove garr̃, & deliver le fait & puis fait livery de terre secundum formam Chartæ, ore le ley adjudgera sur lentier act, & com̃t q̃ le fait fuit deliver a un temps, & le livery del terre al auter temps, & com̃t q̃ un garr̃ covient enure

Co. Lit. 366. b. 567.a. Cr.Car. 483, 484. 1 Jones 397, 398, &c. 3 Co. 78.a. Moor 469.

Cr. Car. 483, 484. 3 Co.78.a. Co.Lit. 367. a. 1 Jones 397, 398.

enure sur un estate, uncore sur tout le matter le garr̃ est bon. 2. Fuit resolve, q̃ coment q̃ le disseisin fuit al pere mesme q̃ fait le release, uncore entant q̃ le pere agrée & consent al disseisin, & il q̃ fait le garr̃ procure le disseisin, & ne (a) impedier, mes q̃ le garr̃ comence p disseisin; car consentientes & agentes pari pœna plectent. Vide Lit. f. 151 en son chapter de Remitter; si baron discontinue (b) le droit sa feme, tout est un quãt al remitter, sils procure, ou cosent al un disseisin, & apres prist feoffemt del disseisour come sils mesm ussoint disseisie le discontinuee. Et issint sont les liures en (c) 44 E.3.46.a. 18 H.8.13. 11 E.4.2. &c. 3. Coment q̃ le disseisin ne soit fait immediatemt al sits, q̃ est destre lie per le garr̃, uncore entant que cest disseisin fuit tort a luy, & devest son remainder hors de luy, ceo ne impedier, mes que le garr̃ commence per disseisin. Et issint est le liure en 31 Edwardi 3. tit. Garrantie (d) 28. ou un frere fait done en tail a auter, le unckle disseisie le donee, et fait feoffment ove garrantie, le unckle mourust, & le garrantie discend sur le donour, & puis le donée mourust sans issue, le donour port Formedon en le reverter, & le feoffée plede le feoffemt ove le garrantie, le dõant avoid ceo, pur ceo que commence p disseisin, & uncore le disseisin fuit fait al donée & (e) nemy al donour: mes p le disseisin tort fuit fait a luy, & son reversion p ceo fuit devest. En cest case Popham Chief Justice dit, que cest verie point fuit en question inter Pawlet & Putenham, & Pawlet que fuit en le remainder, enjoy la terre. Et p graund advise fuit resolve, que il ne fuit barre per le garrantie; Mes ne fuit adjudge. Vide Lecteur les liures en 14 E.4. tit Garrantie 5. Temp E.1. tit Garrantie 86. 27 E.3. 89. 12 Ass. pla 9. 4 Mar. Dyer 148. &c. & le statutes de Glouc cap. 3. & lestatute de 11 H.7. cap. 20. (f) que release ove garrantie del tenãt p le curtesie, ou tenãt en dower, ou tenant pur vie al disseisour fuit collateral garrantie per le common ley, & liera le heir; Mes ceo est destre entend quãt la ne fuit ascun covin, ou collusion a fair disseisins; Mes aps disseisins faits sans covin, la tiel release en case del tenant p le curtesie, ou baron seisie en droit sa feme, devant lestatute de Glouc, ou del tenant en dower, ou en jointure, devant lestatute de 11 H. 7. (g) fuit barre, come release p auter tenant pur vie a cest jour est. Mes release a cest jour per tenaunt pur vie fait al disseisour, ou ascun auter sans covin, & uncore al entent a barr̃ cesty en reversion, barrer̃ luy, car entent sans covin & disseisin

(a) Co Lit. 366.b.

(b) Co. Lit. 357.a. Lit.Sect.678.3 Co. 78. a. Lit. 152. b.

(c) Perk.Sect. 394, 395. Plowd. 51. a. 3 Co. 78. a. Br. fauxifier de recovery 6. Br. collusion 10. Br. dower 15.Fitz.dower 42.

(d) Co. Lit. 366.b. 3 Co. 78. a.

(e) Co. Lit. 366.b. 367.a.

(f) Co.Lit. 365.b.

(g) Co.Lit. 326.b. 365. b.

P

Co.Lit.366.a.1Co. 66. b.

disseisin ne avoydra le gart: Come si le pere en le case al bart ad fait feoffment en fee ove gart, & morust, cest gart liera le fitz, coment q̄ fuit fait de purpose a barrer luy, car la ne fuit ascun disseisin, & pur c̄ tiel gart ne poit estre avoid per averm̄t de covin, pur c̄ que ne fuit ascun disseisin en le case; car gart commenceant per tort ne serra avoid, mes gart q̄ commence per disseisin. Et coment que est dit en nostre livres (& voyer est) que gart soit mult favour en ley, pur ceo que ils extend a establisher cestuy que est terretenant en possession, uncor q̄nt ils sont commixt ove covin, que est cy odious & tant abhorre en ley, le gart p̄der non solem̄t son favour, mes son force auxi; Car covin est semblable al poyson, que voile infect tout le bon chose ove q̄ il est commixt. Nota Lecteur bon resolution, car si tiel covinous invention serra allowe en ley, chescun pere ou auter auncester, que sur consideration de marriage, ou auter bon consideration, ad assure & establie son terre apres son mort a son heir apparent, poit per tiel cautelous & sinister device disherite son heir apparent, que serra plein de graund inconvenience.

Pasch.

Pasch. xxxvii Eliz.

In Communi Banco.

Foord's Case.

INter Bettisford & (a) Foord en Repl' le case fuit tiel; Le Prebendary de Kingston, en le County de Dorset, en le Cathedral Esglise de Sarum, en temps del Raign le Roy H. 8. fist lease del dit prebend pur 70 ans, Levesque Patron del dit Prebendarie, & le Dean & Chapter per lour sev'al Instruments desouth lour common seal (recitant de dit lease) confirm dimisionē p̄dictā in forma p̄dict' fact' pro t̄mino 51 ans tantū, & non ultra: Et puis le dit Prebendarie fist auter lease a commēcer apres le determination del primer lease, &c. & si le primer lease continuera ap̄s les 51 ans, s. si le confirmation extendera al entier term, ou pur les 51 ans tantsolemēt fuit le question. Et fuit adjudge, q̄ le dit confirmatiō (come cest case est) extende al (b) entier term, car qn̄t Levesq; & le Dean & Chapter (recitant le dit demise pur 70 ans) avoyent confirm dimissionem præd' in forma præd', ceux pols pro termino 51 ans, & non ultra, vient trope tarde, & le demise esteant pur 70 ans, est repugnant a confirmer dimissionem præd' pur 51 ans, car est tant come sils avoyent confirm le demise & term de 70 ans pur 51 ans. Mes si Levesq; & Dean & Chapter avoyent recite le lease, & ount confirm le (c) terre al lessee pur 51 ans, ceo ust estre assets bon, car donques ne serra ascun tiel repugnancie en le confirmation. Et nota diversitie (d) enter un nude assent sans ascun droit ou interest, & assent accouple ove droit ou interest, car le tenant que est a perfecter un graūt per son attornement, ne poit assent pur un temps, ne (e) sur

(a) 1 Anders. 47. Cr. El. 447. Dyer 338, 339. pl. 43. N. Bendl. 238. Latch 251. Lane 64. Lit Rep. 364.

(b) Co. Lit. 297. a. 1 Anders. 47. Cr. El. 447, 472. Lit. Rep. 82. Dyer 52. pl. 4. Winch 95, 96. (c) 1 Anders. 47. Cr. El. 447, 472. Lit. Rep. 82. (d) Cr. El. 447. Co. Lit. 297. a. 1 Anders. 47. (e) Co. Lit. 297, 274. b. 300. b. 2 Co. 68. a. 9 Co. 85. b. 1 Rol. 412. M. 1.

condition, ne pur part del chose graunt, mes ceo enurera a tout absolutement, pur ceo que il nad forsq; un nude assent, que ne poit estre qualifie ou apportioñ, mes Levesq; que est patron & le Dean & Chapter ad un interest in le Prebend, & chescun part de ceo, Car le Patron ad jus conferendi, & release al Patron dun annuitie en temps de (a) vacation est bon, come est tenus in 21 H. 7. 41. a. 8 E. 3. 28. Perseis Case, 33 E. 3. tit. Aid le Roy 103. 8 H. 6. 24. accord'. Auxy est tenus en 31 E. 3. tit. Graunt 90. 16 E. 3. tit. Annuitie 23. 8 R. 2. tit. Annuitie 53. q̃ le Pron & Ordinarie poyent (b) charge le glebe en temps de vacation, Ergo ils ount interest: Et F. N. B. 49. dit q̃ le droit est en le Pron & Ordinarie, Vide Litt. Lib. 3. cap. Discontinuance f. 144, 145. Issint si le lease soit fait de 20 acres, ils poient fair confirmation q̃nt al pt del terre come pur un, ou plusors acres; Issint ils poyent confirm part, ou tout, sur (c) condition; p q̃ appiert q̃ ils nont un nude assent; come en case de Attornmt, mes assent appareil' ove un interest. Auter diversitie fuit prise enter lease pur ans, & lease pur vie, done en tail, ou feoffmt en fee; Car si Prebendarie fait lease pur ans, confirmation poit estre del terre, come est avantdit pur (d) meinder ans, car les ans sont several, comt q̃ le demise ou term fuit un. Si jeo vende a vous ascun chose pur 100 l' destre paye 20 l' per annũ, en 5 ans, jeo navera action de Dette, (e) tanq; touts les jours sont encurre, pur ceo que tout est mesque un contract. Mes si home fait lease de terres pur 5 ans, rendant chescun an 20 l' la en case del lease del terre pur ans, les ans sont several, & il avet action de Dette pur chescun an: come est adjudge en 45 E. 3. 8. Mes si Prebendarie fait lease pur vie, ou done en tail, ou feoffement en fee, & confirmation est fait del terre al lessee, donee, ou feoffee pur un heure, cest bon a touts jours, car estate de franktenement ou inheritance est (e) entier: Et pur ceo, si cesty que ad franktenement ou inheritance soit disseisie, & confirm le terre al disseisour pur un heure, ceo est bon a touts jours. Issint si disseisour fait lease pur vie, ou done en tail, & le disseisee confirm la terre al lessee ou donee pur un heure, ceo confirmet tout lour estate, mes ne (f) enurera al remainder ou reversion, pur ceo que il confirm la terre al lessee ou donee solement, & lestate pur vie ou en tail, & le remainder ou reversion sont several distinct estates. Mes si le (g) disseisor fait lease pur ans de 20 acres, le disseisee poit confirm tout, ou ascun part del terre al lessee, a aver & tener a luy pur touts ou ascuns des ans, sur, ou sans con-

(a) Devant 71. a. Br. Release 33. Br. Dean & Chapter 11. 1 Co. 112. b. 2 Rol. 340. Co. Lit. 266. a. Fitz. Release 57.

(b) 1 Co. 147. b. Co. Lit. 297. a. 343. b. F. N. B. 152. I.

(c) 1 Rol. 412.

(d) Co. Lit. 297. a.

(e) 3 Co. 22. a. 4 Co. 94. b. 8 Co. 153. a. 10 Co. 128. b. 1 Brownl. 62, 63. F. N. B. 130, 131. h. 131. a. 2 Leon. 107, 108, 131. 3 Leon. 4. 4 Leon. 13. Ow. 42. Benl. in Ash. pl. 10. O. Benl. 3. pl. 8. N. Benl. 57. pl. 93. Benl. in Kelw. 208, 209. Yel. 67. Cr. El. 118, 119, 776, 807. Moor 13. 1 Rol. 29, 601. 1 Rol Rep. 221. 2 Rol. Rep. 47. Br. Action sur le case 108. in fine. Cr. Car. 241. Cr. Jac. 505. Co. Lit. 47. b. 297. a. 292. b. 2 Sand. 337.

(f) Cr. El. 118, 119, 472. Lit. Sect. 521. Co. Lit. 47. b. 297. a. 3 Co. 22. a. 8 Co. 153. a. 10 Co. 128. b. 2 Brownl. 62, 63. 2 Leon. 108. Ow. 42. 1 Rol. Rep. 221.

(g) Co. Lit. 297. a.

condition, car coment que le term ou demise soit un, & pur c̄ si le term ou demise soit confirm pur un (a) heure, ceo est bon a touts jours; Come est resolve en le case al barre; uncore les ans & acres sont several, & pur ceo le confirmation poit extende al part de eux: Pari ratione si mon tenant (b) pur vie fait lease pur ans, jeo poy confirme le terre a luy pur meinder ans: Issint si tenant en tail fait lease pur 40. ans, & mourust, Issue en tail poit confirm̄ le term, ou part, &c. pur meinder ans Mesme le Ley dun feme apres le coverture. Vide Littleton lib 3. Confirmations 119 & 120, &c.

(a) Co. Lit. 297.a.

(b) Co. Lit. 297.a.

Cases de Customs.

Trin. xxxvii Eliz.

In Communi Banco.

Snelling's Case.

ENter (a) Snelling & Norton le case fuit tiel; Dette fuit port ꝑ Snelling vers Norton Administrator de N. sur Obligac̃; Le Def. mse le Custom de (b) Londres; Que si contract soit fait per un Citizen en Londres, de paier argent al auter Citizen, & cestuy que doit paier devie intestate; q̃ le administrator serra lie de ceo paier, ebien come fuit per obligation. Et mse ouster que le intestate fuit Citizen de Londres, & fuit endette sur un contract a un tiel Citizen, que puys le mort del intestate ad recover vers luy, sur que le Plaintif demur en ley. Et Judgment fuit done vers le Plaintif. Et en cest case 3 points fuer̃ resolve. ¶ 1. Que le dit custom (c) fuit bon encounter lopinion en Dyer 8 Eliz. f. 247. (d) car coment que nul fuit chargeable al cõmon ley ꝑ nosme de Administrator, p̃ c̃ q̃ devant lestatute de (e) 31 Edw. 3. nul Action gist, vers Administrator per tiel nosme, & que custom ne puit commence puis 31 Edwardi tertii, que est deins temps de memorie; uncore entant que ils fueront chargeable al common ley come executors pur lour administration, issint q̃ (f) nosme del charge est soelment chaunge, & uncore en substance tout est un, (car chescun Executor est administrator des biens, & le pleading est, ne unques executor, ne unques ad-

(a) Noy 53. Cr. El. 409, 410. Hob. 86. Swinb. 328, 329.
(b) 8 Co. 126. a. Cr. Car. 347. Hard. 303.
(c) Hob. 86. Cr. El. 410. 1 Rol. Rep. 105. 1 Rol. 551, 555, 556, 557.
(d) Cr. El. 410. 1 Rol. 551. Dyer 247. pl. 73.
(e) 2 Inst. 398. Selden Jurisdict. de Testaments 24. Co. Lit. 133. b. 9 Co. 38. b.
(f) Cart. 118. Cr. El. 409.

administravit come executor; & un Administrator ad le Office ou qualitie dun Executor, a cest cause le custom alledge en tiel general manner fuit resolve destre bon. ¶ 2. Et fuit resolve Si Lordinarie prist les biens en son possession, il fuit chargeable per le common ley; Et lestatute de Westm̄. 2, cap. 19. Cum post mortem alicujus, fuit fait en affirmance del commō ley. Vide 17 E. 2. tit Brief 822. 24 E. 3. 55. 11 E. 3. Executors 77. 18 H.8. 23. 9 E. 4. 33. 11 H. 7. 12. F.N.B. 120.D. ¶ 3. Fuit resolve, coment que le Plaintiff fuit estranger, & nul Citizen, uncore cest custom fuit bon a lyer luy. Vide 1 Ed.4. f. 6. a.

Dyer 247. pl. 73. 2 Inst. 397. Plowd. 277.a.b. 9 Co 39.b.

Dyer 196. pl. 42. 1 Rol. 556.

Hill. xxxviii Eliz.

Case de Market overt.

(a) 1 Anders. 344, 345. 2 Anders. 115. Moor 625, 360. Pop. 84. Cr. El. 454. 3 Co. 78. b. 8 Co. 127. a. 9 Co. 66. b. 2 Brownl. 288. Dyer 122. pl. 16. 35 H. 6. 29. b. 2 Inst. 713. 1 Jac. cap. 21.
(b) Hales Pl. Cro. 45. Palm. 485. 2 Brownl. 288. 8 Co. 127 a. 9 Co. 66. b. Cr. Jac. 69, 280, 496. Jenk. Cent. 291. 1 Jones 156, 157. Cawly 78. Dyer 168. pl. 17. Pop. 84. Moor 624. 1 Anders. 344.
(c) Cr. Jac. 69. Poph. 84. 1 Anders. 344. Moor 360, 625. Cr. El. 454.
(d) Moor 360. Poph. 84.
(e) 1 Anders. 345. Moor 360, 625. Cr. El. 454. Poph. 84. Godb. 131. Palm. 485, 486. 1 Jones 164.
(f) 1 Jac. cap. 21.

AL Sessions de Newgate ore darrein passe, fuit resolve per Popham Chief Justice Dengliterre, Anderson Chief Justice del Common Pleas, Sir Thomas Egerton Master des Rolls, Lattorny General, & le Court; Que si Plate soit emblee, & vende overtment en un Scriveners Shop en le jour de Market, (come chescun jour est jour de (a) Market en Londres, savant le jour de (b) Soleil) que cest sale ne changera propertie, mes le partie avera restitution, car (c) Scriveners Shop nest Market overt pur plate; car nul voille searcher la pur tiel chose, Et sic de similibus, &c. Mes si le sale ust estre overtment en un (d) Goldsmiths Shop en Londres, issint que chescun que estoit ou passe per le Shop, poit ceo veier, la ceo changer le propertie. Mes si le sale soit en le Shop dun Goldsmith, ou arrere un hanging, ou arrere un Cupboard sur que son plate estoit, issint que un que estoit, ou passe per le Shop, ne poit ceo veier, ceo ne changera le propertie. Issint si le sale ne soit en le Shop, mes en le Warehouse ou auter (e) lieu del meason, ceo ne changera le (f) ppertie, car ceo nest en overt Market, & nul voille sercher la pur ses biens. Issint chescun Shop en Londres, est Market overt pur tiels choses solement, que per le trade del owner sont la mis a vender. Et quant Jeo fui Recorder de Londres, jeo certifie le Custom de Londres accordant. Nota Lecteur, le reason de cest case extende a touts Markets overts en Engliterre.

Triñ

Trin. xli Eliz. Reg.

In Communi Banco.

Perryman's Case.

IN Repl̃ enter Bowyer & Peryman: Le Def. avowa pur damage fesant, come en son franktement; Et issue prise sur le franktenement, & un special verdict fuit trove a cest effect; R. R. seisie del terre en fee, enfeoff divers p fait en fee & morust sans heir, & trove un custom en cest manner: Infra manerium de Porchester, à tempore cujus contrarii, &c. habebatur consuetudo; Quod si aliquis tenens aliquorum terr̃ sive tenementorum de manerio præd' ten̄t alienaverit sive concesserit hujusmodi terr̃ sive terrã per script̃ sive feoffament̃ inde confect', vel per testamentum suum hujusmodi terras sive tenementa dederit sive legaverit, quod tunc hujusmodi alienatio, concessio, don' seu legatio fact', vel ad proxim̃ Curiam ejusdem maner̃ fuerunt præsentat̃, & præsentari consueverunt, vel ad aliquam cur̃ ejusdem manerii infra annum post hujusmodi alienationem, concession̄, sive feoffament̃, donum sive legationẽ, fact', vel ad proxim̃ cur̃ ejusdem manerii post annum illud tenend': Et si aliqua talis alienatio, concessio, &c. in forma præd' non præsentat̃ fuerit, tunc hujusmodi alienatio, concessio, &c. sic minime præsentat̃ per consuetudinem manerii illius vacua fuerit: & trove que le dit terre fuit tenus del dit Manour, & que le dit feoffmt ne fuit p̃senta accordãt al custom; Et si ceo fuit reasonabl' ou loyal custom ou nemy fuit le question. Et fuit adjudge que ceo fuit reasonable (a) custom. Mes encounter cest custom fuit object, 1. Que si cest custom ser̃ allowe, q̃l remedie (b) si les tenants ne voile p̃sen̄t c̄? ou si le Steward voile rejecter le p̃sentment? Quãt a ceo fuit r̃nde p le Court, q̃ autiel objection poit estre fait sur bargain & sale per fait, q̃l remedie si le Clerk ne voile enroller c̄? Et en case de Copyhold, quel remedie si les Copyholders ne voylent p̃senta surrender fait hors del court? Et caveat (c) emptor, & il a son pil est a pfecter tout c̄ q̃ est req̃site a so assurãce; Et nest sembl' al case en 2 H.4.24.b. ou un Custom fuit plede, q̃ nul (d) user̃ so cõmon en tiel lieu, tanq; le Seign̄r enter

2 Anderſ. 125, 126. Cr. El. 668, 669.

(a) Lit. Rep. 233. 2 Anderſ. 125. Lane 32. Bridg. 82, 83. Hetly 127. Bridg. 51. 3 Bulſt. 215.
(b) 2 Bulſt. 337.

(c) 1 Rol. Rep. 125, 195. 4 Co. 26. a.

(d) Fitz. custom 10. Br. custom 12.

enter oves ses bestes; Et ꝑ totã Curiã ceo ne poit estre custom, car si le Seigniour ne voille enter, il nest reason que le commoner ꝑda son common. 2. Fuit object q̃l un foits ceo fuit un feoffmẽt, donq̃s adire q̃ le custom del manoꝛ devestera un estate de franktenement & inheritance veste ꝑ solemn liverie, serra encounter ley. A q̃ fuit rẽdue & resolve, que le reason del common ley, q̃ terre passera per solemn (a) liverie, fuit a doner notice al pays, q̃ur suer owners del terre, al entent q̃ nul serra deceive en pꝛisel de leases & estates, & chescun avera notice que serra tenant al Præcipe, & Seigniors a vont meliour notice de lour tenants daver gard, eschete, &c. & pur ceo un custom que foꝛtifie le reason del common ley ove greinder solemnity & notice, est bon, come en cest case, dauẽ le feoffment apertement pꝛesenta en open court, al intent que le Seigniour & tout ses tenants pꝛendoient notice, & pur ceo si ceo ne soit pꝛsenta solonque le custom donques le livery est devenus void, pur c̃ q̃ fault pꝛesentment q̃ est part del essence del livery. Et fuit dit q̃ nest plenum & perfectum feoffamentum en cest case, tanq̃ pꝛesentmẽt fait en court, solonque le custom, mes opus (b) inchoatum & non perfectum; & uncoꝛe si le feoffoꝛ ou le feoffee (c) moꝛust, & puis est pꝛsent solonq̃ le custom, ceo est bon; Come si hõe deliver un escript come (d) escrow destre son fait sur certain conditions destre pꝛfoꝛm, & puis obligoꝛ ou obligee moꝛust & puis le condition est pꝛfoꝛm, le fait est bon, car la fuit traditio inchoata en le vie des parties, sed postea consummata existens per les perfoꝛmances del condition, pꝛist son effect per foꝛce del pꝛimer deliverie, sans ascun novel deliverie: Issint en le case al barr, quant le feoffment est pꝛesent solonq̃ le custom, donques c̃ pꝛist son effect per foꝛce del liverie devant. Et fuit dit, que fuit un custom en Kent, q̃ si le franktenants dun Castle ne paya lour rents, que ils perdꝛont lour terre tenus de ceo. Et q̃ le custom de Lidford Castle en le countie de Devoñ est, que fræholder de inheritance ne poet passer son franktenement sinon ꝑ surrender en le mains del Seigniour, &c. Et le custom de Londres est, que devise de terre per volunt en escript esteãt enrolle, est bon, car ceo ad greinder solemnitie adde al volunt, q̃ en auters Burghes ou terres sont devisable. Et issint Judgmẽt fuit done en le pꝛincipal case, q̃ le custom fuit bon & loyal. Et cest plea commence Hill. 40 Eliz. Rot. 159. In Communi Banco.

(a) Plowd. 302.b.

(b) Bridg. 82, 83.

(c) Lane 32. Bridg. 51.

(d) 9 Co. 137. a. Co. Lit. 36. a. Cr. El. 520. 835, 836, 884. 2 Rol. 26, 27. Moor 642, 696, 697. Noy 6, 50. Cr. Jac. 85, 86. Stiles 251. Hob. 246.

Paschæ

Pasch. xxxviii Eliz.

In Bank le Roy.

Sir Henry Knivet's Case.

ENter Sir Henry Knivet Pl' & Pool & auf Def. sur special Verdict, le case fuit tiel. Tenāt p vie remaind en fee al Pl'; tenāt p vie lessa pur ans, lessee pur ans est ouste, & tenant pur vie disseiser, le disseisor lessa pur ans, & son lessee emblea le terre, & tenant pur vie morust, Sir Henry Knivet q̄ ad le remainder en fee enter: Les Defendants prist les emblements; & pur eux Sir Henry Knivet port action de Trespass, & sur rien culp. plead le Jury trove lespecial matter avantdit. Et fuit adjudge que le Plaintiff esteant cestuy en le remainder nad droit a les emblements. Fuit auxy resolue que les Defendants enclaiment per le lessee del disseisor navoit mere droit a eux, mes in respect de son possession, barrera le Plaintiff, mes le mere droit fuit en le lessee del tenant pur vie & il poit aver action de Trespass, & recovera touts les mean profits vers le lessee de le disseisor: Ergo cesty in remainder navera remedy pur eux, auxy ne recovera damages pur eux. Car donques le lessee le disseisor serra 2 foits charge. Mes quant al entrie in le terre pur prender des emblements, ceo fuit bon matter de Justification, mes intaut que ils ount plead rien culp. le Plaintiff ad judgement pur le entrie, & fuit barre pur le residue. Et Nota Lecteur, en le principal case, le

Goldsb. 143, 144. Cr. El. 463, 464. 2 Inst. 81.

Hob. 132. Co. Lit. 55. b.

Co. Lit. 282. b. Doct. pla. 200.

le lessée del tenant pur vie ad droit al terre, & p consequence al emblements, come choses annexe al terre, & le mort del lessé pur vie determine son interest al terre; Mes son droit al emblements remain, & ceo fuit le principal reason del judgment.

Co. Lit. 55. a. b.

Trin. XXXViii Eliz.

In Bank le Roy.

Penryn's Case.

Moor 403. Jenk. Cent. 141, 142, 259. 2 Rol. Rep. 29.

EN Bre de Error, inter William ap Richard, & William Penryn, sur un Judgemt done en Gales, in le County de Mountgomery, devant Sir Richard Shuttleworth Justice la, &c. en un quod ei deforceat in nature dun Brief de droit (come le use & presidents sont la.) Le error fuit assigne in le matter in ley, q̃ fuit tiel: William ap Richard, port quod ei deforceat in nature dun Bre de droit, de certain terr in le County de Mountgomery, vs Penryn, q̃ appiert, & joyne le mis sur le mere droit, & sur ceo un Jury p ven' fac̃ fuit retorn, & dont 12 fuer jure & charge, & devãt vdict le dd̃ãt fuit nonsute, sur q̃ judgmt final fuit done: s. Quod tenens teneat terram illam sibi & hæred', in pace versus petentem & hæred' suos imperpetuũ. Et puis mesme le dd̃ãt port auter qd' ei deforc̃ in natur dun bre de droit vs mesme le tenãt de mesme le terr, q̃ plede le judgmt final en barr; Sur q̃ le demãdãt demur; Et judgmt fuit done vs luy: Et sur cest darrein judgmt, le dd̃ãt port bre de Error. Et apres plusors arguments & longe deliberation, judgment fuit affirm. In cest case 3 points fuer resolve, ¶ 1. Que coment que p lestat de Rutland fait 12 E. 1. est purvieu, q̃ tryal in Gales in Brief de droit serr p common Jurors & p 12. uncore judgmt final serr la done, come fuit devant lestatute, coment q̃ le mãner

Cr. El. 503. Co. Lit. 295. b. Lit. Sect. 51.

Co. Lit. 295. b. Cr. El. 503.

&

& dignity del trial fuit alter: Car lestatute ad alter le trial, mes le Judgment q̃ appent a tiel action remain come fuit devant. ¶ 2. Si Judgment final soit done en brief de droit, ou ne doit estr̃, uncore ĩ liera tanqꝫ ceo soit reverse. ¶ 3. Fuit resolve, que si le tenant apres le mis join, fait default, Judgment final sur cest default ne serra done (come Fitzh. en son Nat. Br. 6. tient) mes petit cap̃ issera; Car peradventure il poit saver son default. Vide temps E. 1. Droit 41. 13 E. 1. Droit 51. 7 E. 3. f. 67. 8 E. 3. f. 8. 11 E. 3. Statham, Droit. 27 E. 3. 85. 33 E. 3. Judgment 252. 44 E. 3. 13 H. 4. Judgment 245. 3 H. 6. 55. 10 H. 6. 2. 9 E. 4. 16. 12 H. 7. 26 H. 8. 8. 35 H. 8. Dyer 56. 1 Mar. Dyer 98, 103. ou Judgment final en brief de droit sert done.

Jenk. Cent. 259.

Co. Lit. 295. b. Cr. Jac. 293. 2 Sand. 46. Yelverton 211. 1 Bulstr. 159, 160, 161. F. N. B. 5. n. 11. a.

Cases de Executions.

Mich. xxxviii & xxxix Eliz.

Rot. 259. In Bank le Roy.

Blumfield's Case.

(a) Moor 459. Cr. El. 478, 479, 555, 573, 574. 3 Keb. 306.

(b) 1 Rol. 308. Cr. Jac. 338, 339, 532, 694. 2 Bulstr. 97, 98, 99, 100. 1 Rol. Rep. 8, 9. Godb. 257, 258.

(c) Godb. 208. Cr. Jac. 338. 2 Bulstr. 98. Hob. 59.

(d) Linacres Case Hill. 33 in Communi Banco. 1 Anders. 266. 1 Leon. 230. 2 Leon. 96. 1 Rol. Rep. 204.

(e) Williams Case Pasch. 24 Eliz. in Communi Banco. Cr. El. 851. 1 Rol. 903. 1 Rol. Rep. 9. Hob. 59.

IN Audita querela enter Blumfield & Usewick le case fuit deux homes fuer̃ oblige jointment & severalment in un obligation, lun fuit sue, condemn, & prise en execution, & puis lauť fuit sue, condemn, & prise en execution; & puis le primer escape, & sur ceo lauter port Audita (b) Querela: Et comt q̃ le Pl' poit aver action sur le escape vers le Visc̃, uncore jesq; il soit satisfie in fait, lauter ne poit aver Audita Querela, & padventure le Visc̃ riens vault, & si les Def. ount estre sue p un brief, per several Præcip. comt que lentrie serr̃ quod unica fiat executio, ceo est destre intend dun execution ove satisfaction, car il avera ambideux lour corps in execution. (c) 4 H. 7. 8. & 29 H. 8. tit. Execution Br. acc' 132. Et issint est le liure en 4 E. 4. 38. & 5 E. 4. f. 4. destre intend. Hill. 33 Eliz. in Communi Banco fuit adjudge int̃ Linacre & (d) Rodes, q̃ nient obstant q̃ le conusor sur statute staple soit prise & escape, uncore ses biens & terres sur m̃ lestatute poit estre extend, car lescape & laction que le Pl' ad vers le Viscount p̃ lescape, nest satisfaction del debt Issint si le conusor soit prise & morust in execution, le conusée avera execution de ses biens & terres. Et fuit adjudge Pasch. 24 Eliz. en le Cõmon Bank enter Jones & (e) Williams, q̃ ou deux homes fuer̃ condempnes en debt, & lun fuit prise & morust in execution, uncore le prisel

del

del lauter fuit loyal. Et donques fuit resolve ꝑ totam Curiam, q̃ si le Def. in debt (a) moruſt in execution, q̃ le Pl' poit aver novel execution per Elegit, ou Fieri facias pur divers reasons. ¶ 1. Pur c̄ q̃ le Pl' ne ser̃ ꝓjudice, ne le Def. benefit ꝑ lact & tort del Def. en nient paym̃t de son debt, qñt nul default est in le Plaintiff, il ayant pursue le due & ordinary course del ley. ¶ 2. Le execution del corps nest (b) satisfaction (cõe appiert en 4 H.7.8. & 33 H.6. (c) 47. Hillaries Case adjudge) mes un gage p̃ le debt. Come ou home ad returñ irreplevisable agard, cõe est dit en 33 H.6.46. & p̃ c̄ aps son mort il resorter̃ a novel execution. Et les pols de cap. ad satisfaciend' sont, cap. I. de S. Ita qd' habeas corpus ejus corã Justiciar̃ nr̃is, &c. ad satisfaciend' G. de K. de debito & dampnis, &c. Issint q̃ son corps est prise al intẽt q̃ il satisficer̃, & qñt le Def. pay les deniers, il ser̃ discharge del prison. ¶ 3. Le mort del Def. est lact del Dieu q̃ ne turner̃ le Pl' al ꝓjudice, come est dit en * Trewmyards Case, 33 H.8. Dyer 60. le Pl' ne ser̃ ꝓjudice de son execution ꝑ act in ley, q̃ ne fait tort al ascun. ¶ 4. Ser̃ mischievous al Pl' a pder son debt sans ascun default en luy, & nul mischief si novel execution ser̃ fait, car riens ser̃ liable a son novel execution, mes les terres & biens del Def. q̃ en ley & tout equity doient estre subject al paym̃t de ses debts. Et nest semble qñt le Pl' ad execution des terres del Def. & puis les terres sont evict, la devant lestatut̃ de 32 H. (d) 8. il naver̃ ascun novel executiõ, car lexecution des terres fuit valuable & accounꝫ en ley p̃ un satisfaction, & pur avoiding de infiniteness, ne ser̃ forsq; un valuable execution, ou execution ove satisfaction al common ley, mes execution del corps nest valuable execution; & p̃ c̄ le Pl' apres son mort avera novel execution, (e) tanq; il ad ewe valuable execution, q̃ est le fine & fruit de son suit. Et finis rei attendend' est, & fines mandatorum Domini Regis ꝑ rescripta sua (s. brevia) diligenter sint observandi. Issint Lecteur, nota bon diṽsities inter execution nient valuable (come del corps del Def.) & execution valuable, come de terres, &c. Et p̃ c̄, si villein soit deliver a un in execution, sur recoṽy en value, & puis le villein moruſt sans issue, uncore le dṽant ne unq̃s aver̃ novel execution, car son prim̃ execution fuit valuable, & ꝑ la ley hom̃ naver̃ unq̃s forsq; un execution valuable. Nota auxy un diṽsity inter execution final, come ou le Viscount levy les deniers des biens del Def. ou extẽd ses terres, & deliver eux al Pl', car c̄ le pty accept in satisfaction, & c̄ est le fine del suit, & tout c̄ q̃ bre de Roy command dest̃ fait; & inter execution ove un (f) quousque, &c. tendant al fine, & q̃ nest final, come

(a) Lit. Rep. 325, 326. 1 Rol. 903. Cr. Jac. 136, 143. Moor 857, 858. Cr. El. 850, 851. Hob. 59, 60, 61. 21 Jac. c. 24. Hetl. 159.

(b) Cr. Jac. 338.

(c) 2 Bulstr. 97, 99. Hob. 59. 1 Rol. Rep. 9.

* Godb. 373.

(d) 32 H. 8. c. 5. Cr. Jac. 694. Co. Lit. 289. b. 4 Co. 66. a.

(e) Godb. 294.

(f) 2 Bulstr. 98.

en le case de Capias ad satisfaciendum, &c. ceo nest final; mes son corps est destre prise al intent & purpose q̄ il satisfiet le party, & son imprisonmt nest absolute, mes quousque le Def. satisfiet le party: Mes lexecution final est, qnt le party est satisfie; Et pur ceo q̄ il mourust devant satisfaction, estoit ove ley & equity, q̄ le Pl' resortet a novel execution. Vide Regist. & Fitz. N. B. 246. si home ad recover damaḡ en trns devant Justices de Oier & Terminer, & ad le corps del party in execution quousque satisfecerit le Pl', & cestuy q̄ est in execution devy, cestuy q̄ recover, suet Cerciorari al Justices, a remover le Record en Bank le Roy, q̄ les Justices la poient fait sur c̄ record, come le ley voit in tiel case: Et ceo est dagarder novel execution, 47 E. 3. tit. Execution 41. si en trns le Pl' recover, & le Def. est prise p̄ le fine le Roy, sil prie q̄ le Def. remainet en prison tanqz a luy soit satisfie, il navera elegit, pur ceo q̄ il ad prise execution de son corps, & avoit: Mes si le party devy en prison, issint q̄ il nad executiō (ove satisfaction) in quel nest son default, il avera elegit apres, pur ceo q̄ il ne poit aver (satisfaction) solonqz le primer election; & ceux sont parols del livre, & ove ceo accord Fitz. N. B. f. 246. b. Et si le conusor dun statute merchant ou staple, &c. soit prise, & mourust en execution, uncore conusee avera execution sans question de ses biens & terres, come fuit resolve in (a) Linacres Case. Et issint vous melieux entendes vrs livres in 22 Ass. pl. 43. 33 H. 6. 46, 47. 4 E. 4. 38. 5 E. 4. 4. Brook tit. Execution 79. 41 E. 3. 13. in account, &c.

(a) 1 Anders. 266. Hob. 60. 1 Leon. 230. 2 Leon. 96. 1 Rol. Rep. 204. Devant 86. b.

Hill.

Hill. xl Eliz. Reg.

Rotulo 114.

Garnon's Case.

INter Layton Plaintiff, & Garnon Viscount del County de, &c. Def. le case fuit tiel: Layton recover vers Walwen en le Common Bank en Action de Debt, & sua Cap. ad satisfaciendum, & ex post ca. & utlage le Def. Le Def. port bre de Error, & Judgment fuit affirm. Et sur ceo deins lan, Cap. Utlagatum fuit agard, & le Def. fuit prise, & le Viscount suffer luy descap devant le return del bre, & sur cest escape le Plaintiff port cest action. Et en cest case trois points fuer resolve. ¶ 1. Si un al common ley ad Judgment in action de Debt, & puis le Judgment utlage le Def. le Pl fuit al fine de son suit quant al ascun proces destre sue p luy mesme, car il ne poit aver Scire facias, ne ascun auter proces sur le Judgment, mes fuit mise al son (a) novel original, come est agree in 13 H. 4. f. 1. a. 21 E. 3. 55. 20 E. 3. Nonability 8. acc. Et coment q devant le statute de 25 E. 3. Capias ne gist in Debt, ne le (b) corps devant cest statute fuit subject al execution pur debt, come appiert devant in Sir William Herberts Case, unc si le Def. soit prise p Capias Utlagat al suit le Roy, nul laches esteant en le Pl en continuance de son proces, il serra en (c) execution pur le Pl, sil voet: Car intant q le Roy p loriginal suit del pty, est intitle daver touts ses biens & chateux, & les profits de ses terres p lutlagary, & son corps auxy in prison; reason require q si le Def. en tiel case soit prise al suit le Roy, q sicome le Roy avet benefit p le suit del pty, issint le pty avet ascun benefit p le suit le Roy. ¶ 2. Fuit resolve, q si Judgment soit done in le Common Bank, & remove p Bre de Error, & Judgment affirm deins le an, (d) ils agard Capias, ou Fieri facias, & le

Moor 566, 567. Cr. El. 706, 707. 1 Rol. 810, 895. 1 Leon. 263. Cr. Jac. 361.

(a) Co. Lit. 291. a. 2 Bulstr. 63. Cart. 124. Cr. El. 706. 3 Co. 12. a.

(b) 1 Brownl. 218. 2 Bulstr. 63.

(c) Yelv. 19, 20. Bridg. 7. 1 Rol. 810, 895. Cr. El. 706. Moor 567, 598. Hob. 57.

(d) Godb. 372, 373. Cr. El. 416. 2 Inst. 471. Cart. 180.

Plaintiff nest mis a scire fac, coment que soit in auter Court, encount lopinion in 14 H. 7. 15, 19. Vide 21 Ass. pl. 14. Fitz. Nat. Br. 267. ¶ 3. Fuit resolve, q in le case al barre, quant il fuit prise p Cap utlagatum, q issuist hors del Bank le Roy, il sert in (a) execution pur le Pl maintenant apres son arrest, sil voet coment q son corps ne unques fuit amesne in le Court, & coment q le Court ne luy comit in execution p le party. Vide 7 H. 6. 6. Nota bene en touts cases quant le Pl poit aver Capias ad satisfaciendum, & le party Def. est prise p Capias (b) p fine, la le Def. est en execution maintenant, si le Pl voet, sans ascun prier del party. Aux in touts cases, quant le Pl poit aver execution maintenant per Fieri facias, coment q il ne poit aver Capias, ne Cap. gist in tiel action, come in Assise ove force & redisseisin, &c. & le party est prise per Capias pro fine, & est commit al suit le Roy, la le Pl poit prier que il remainet in executio p ses damages, mes sans prier il ne sert in execution, coment q il poit aver execution per Fieri facias. Et quant le Pl ad Judgment, & (c) surcease son temps, issint q il ne poit aver execution maintenant, neq p Capias, neq per Fieri facias, &c. mes est mise al Scire facias, la si le Def. soit prise per Capias (d) pro fine, le Pl poit prier q il remainera in execution pur luy, mes ceo ne sert sans prier del party. Vide pur proof de ceux diversities 11 H. 7. 15. 13 H. 7. 21. 7 H. 6. 6. a. 36 H. 6. 23. Fitz. Nat. Br. 121. p 6 E. 4. 4. a. 2 R. 3. Execution 16. 7 H. 4. 4. b. &c. Observe bone Lecteur bien cest case, & touts ceux livres; Car ceux points touchant executions (q est le vie del ley) sont fort necessary destre conus.

(a) 1 Sid. 380. Cr. El. 652, 706, 850. Yelv. 19, 20. 1 Rol. 810, 895. Bridg. 7. Moor 567. Hob. 57, 115. Apres 89. a.

(b) Moor 567. Bridg. 7.

(c) Bridg. 7.

(d) Moor 567. Cr. El. 467. 1 Leon. 263. Bridg. 7. Hob. 57.

Trin. xli Eliz. Reg.

In Communi Banco.

Frost's Case.

FRost recover Debt & Damages vers B. en le Common Bank in 29 Eliz. & sur ex post cap, le Defendant fuit utlage, & puis lan, le Plaintiff procure Capias Utlagat vers luy, & ceo deliver al Vic de Londres. Et que un Laborn (un des Serjeants del Vic de Londres) ount arrest le dit B. en Fleetstreet al suit dun A. a rider, &c. devant les Vic; Laborn gard B. in son meason, & donques Frost viét al Laborn ove gart de Vic de arrester luy sur le Cap. Utlagat, le quel ils oustermert refuse. Et puis les Vic suffer le dit B. daler alarge: Et sur cest matt Frost port action sur le case vers les Vicc, & suppose q les Vicc arrest le dit B. per force del dit Capias Utlagat, & q le Vicc suffer luy daler alarge. Les Defendants plead non permiserunt eum ire ad largum, & le Jury trove tout le dit especial matter; Et Judgment fuit done pur le Plaintiff. Car ¶ 1. ils resolve, que quant home est en le custody del Viscount per proces del ley, & puis auter brief est deliver a luy de prender le corps de cestuy que est in son custody, maintenant il est in son (a) custody per force del second brief, per Judgment del ley, coment que il ne fist actuel arrest de luy: Car a quel purpose ferra il arrest de luy, que est & fuit devant in son custody? Et (b) lex non præcipit inutilia, quia inutilis labor stultus, & les parols del Cap ad satisfaciendum ne sont solemt, quod cap, &c. mes auxy, quod salvo custodiat, &c. Ita quod habeat corpus, &c. Issint que coment que il ne poit prendre luy (que il ad) en son custody, uncore il poit safemt garder luy; & ove ceo accord

1 Leon. 263. Bridg. 7.

(a) Cr. Jac. 486. Devant 88. b.

(b) 2 Rol. Rep. 408. Devant 21. a. Hardr. 387. Co. Lit. 127. b. 197. b.

accord 7 H. 4. 30. b. ¶ 2. Le verdict garrant bien le count, car en Judgment del ley ceo est equipollent & amount a tant, come si les discounts ount arrest le dit B. ¶ 3. Que coment que le cap utlagat fuit sue apres lasi, issint que le Defendant ne puit estre en (a) execution sans prier del party, &c. uncore le Plaintiff est prejudice per son escape, car il ne doit estre discharge del imprisonment tanque il trover surety de satisfier luy per le statute de 5 (b) E. 3. cap. 12.

(a) Cr. El. 467. Devant 88.

(b) Dyer 172. pl. 11.

Trin. xlii. Eliz.

In Lexchequer.

Hoe's Case.

Moor 468. Cart. 19.

INter Clement Hoe, Executor de John Hoe Plaintiff, & Boulton Defendant; le case fuit tiel. John Hoe le Testator ad Judgment de recover en Bank le Roy vers Boulton 75 l. 3 s. 4 d. John Hoe assigna ceo per fait inrolle al Roigne in satisfaction dun debt due al Roigne per luy, come collector de quinzim; ove proviso, que si le Seignior Treasurer, & les Barons del Eschequer, ou ascun deux de eux, pur ceo que le debt ne poit estre levy in reasonable temps, ou per ascun auter reasonable cause disallow cest assignment, & ceo revoke, per escript desouth lour mains; donques lassignment sera void. Et puis Boulton port brief de Error solonque le novel Statute, & la Judgment fuit affirm, & 5 l. costs sur le affirmance del Judgment: Et puis sur proces (que est appell' brief de prerogative, hors del Exchequer, sur le assignment) les terres de Boulton fueront extende, & ses biens queux fueront de value ouster le dit debt

27 El. cap. 8.

debt assign, fueront seise per le Viscount p force del dit brief, mes le brief ne fuit return: Et puis Periam, Ewens & Sotherton, trois des Barons revoke lassignmt, apres le mort le testator, p c q le testator ad satisfie le debt, q fuit due al Roign p luy come Collector. Et ore le Pl' come executor de John Hoe suist Scire facias daver execution del dit 75 l. 3 s. 4 d. & 5 l. costs. Et le dit matter esteant disclose p special pleading, demurrer en ley fuit join; Et en cest case trois points fuer resolve. ¶ 1. Que le execution pur le Roigne fuit bon sans question, qnt al biens, comt q le brief ne soit retourn. Et issint est en case dun common person, si le Viscount p force dun brief de Fieri facias levy le debt, & deliver c al party, le execution est bon sans return del brief, come est adjudge 20 H. 6. 24.a. & 21 H. 6. 5.a. & issint fuit adjudge in le Comon Bank, Pasch. 23 Eliz. inter Rook & Willimote: & Trin. 33 Eliz. inter Mount & Andrews, & ove c accord 44 E. 3. 18. Issint si home soit prise sur Capias ad (a) satisfaciendum, le execution est bien fait, comt q le bre ne soit unqs return; Et le diversity est apparent inter Capias in proces & Capias ad satisfaciendum, car si le Capias (b) en proces ne soit return, larrest est tortious, car la le fine del arrest est, al intent que le pty appearet & rnde al Pl'; mes in touts bres de executions, qnt le Viscout sole fait c, come Capias ad satisfaciendum, habere facias seisinam ou possession, fieri fac, liberat, &c. si lexecution soit duemt fait, c est bon, comt, q le brief ne soit return, car la le Pl' ad leffect de son suit, & nul auter chose est destre fait de son pt in apres: Mes in case de (c) Elegit, pur c q la lextent ad destre fait p inquest, & nemy per le Viscount solement, ceo doit estre return, autrement ceo rien vault. Issint per ceux resolutions in le case al barre, & per les dits Judgmts icy cite, vous appnder le ley, & melieux intender vre livres in 19 E. 3. tit. Scire facias, 11 H. 4. 73.b. & (d) Fulwoods case in le 4 part de mon Reports. Nota Lector, que les dits Judgmts done en le case del Fieri facias, ou execution fuit fait, & nul brief return, fuer done sur grand reason. ¶ 1. Pur ceo q le levier del debt fuit loyalmt, & bien fait, & le party Defendant ne poit resister le Viscount, a levier les deniers. ¶ 2. Leffect del authority, q le Visc avoit p force del Fieri facias, fuit execute. ¶ 3. Le grand prejudice que le Defendant (les biens & chateux de que soit vendus per le bre & proces del ley, pur satisfaction de son debt) aver, si le non retourn del Viscout del brief, causer novel execution destre ewe vs luy, & layser le Defendant a son action vs le Viscout.

¶ 4. Si

Rooks Case, Trin. 23 Eliz.
Mounts Case, Trin. 33 Eliz.
(a) Cr. El. 17. Lane 52. 21 H. 7. 23.a. Moor 57. Owen 48. 4 Co. 67. a.)
(b) 2 Rol. 563. Lane 52. 21 H. 7. 23. a. 4 Co. 67. a.
(c) 4 Co. 67. a.
(d) 4 Co. 67. a.

4. Si le vend del biens p force del brief, sert p le non return del brief, torcious, donqs le Viscount ne unques trovet achators des biens dascun Defendāt p force dascun brief dexecution, q̄ sert inconveniēt, & grand delay de executions, q̄ sont le fruit & vie de chescun suit. Et ou les parols del brief de Fieri facias sont, Ita quod habeas denarios, &c. ne sont forsqs parols de commandmt al Viscount a fait return, le quel sil ne fait, il serra amercie, mes uncore lexecution estoiet in son force. 2. Fuit resolve, q̄ apres execution ewe p le Roigne, le revocation vient trope tarde, car donques le Roigne avoit ewe leffect & fine de dit assignmt: Et c̄ q̄ fuit executory, qnt c̄ fuit assign, est ore execute p loyal proces del ley & p̄ c̄ ne poit estr revoke, car qnt un ad power de (a) revocation, uncore sil suffer ascun chose destre loyalmt execute p force de c̄, qnt a c̄, il ne poit fait revocation. Come si home fait lettre dattorney a fait livery, devāt execution il poit c̄ revoker, mes apres execution loyalmt ewe, ceo est executed, & ne poit estre revoke, Vide 7 (b) H.6.41. in detinue ou le case fuit. In detinue dun statute merchant, le Defendant pria garnishmt, le Pl' recover vers le garnishee p erronious Judgmt, p force de quel, le Defendant deliver lestatue al Pl', q̄ ad execution, & puis le garnishee revers le Judgmt in brief Derror, per q̄ il ad restore tout ceo q̄ il parde, per ceo lexecution ne serra avoid: Mes semble a moy en tiel case, il serra aid per Audita Querela. Vide 7 E. 4. 2. si un, a q̄ auter soit indebt, soit utlage, & cestuy que est indebt paya les deniers al Roygne, & puis le utlagary est reverse, ore le creditor recovera son debt vers luy: Issint si les biens dun (c) utlage sont vende per le Viscount sur bre de Capias utlagat, &c. & puis l'utlagary est reverse per brief de Error, le Defendant avet restitution de ses biens: Mes si le Viscount per force dun Fieri facias (d) vend biens, & puis le Judgmt est reverse in brief derror, le Defendāt navet restitution de ses biens, mes le value de eux, pur q̄ ils fuet vende; & sont deux reasons de cest diversity. 1. Si le vendition del Viscount p force dun brief de Fieri facias, serra avoid p subsequent reversal del Judgmt, nul voile achater, & per consequence, nul execution serra fait. 2. En le case de Fieri facias, le Viscount est compellable a fair & a levier le debt des biens &c. del Def. & p̄ c̄ est grand reason q̄ ceo estoiera: Mes en le case de Capias utlagat, le Viscount, ou escheator, nest compellable a eux vend, mes poiēt conserve al opes le Roy; & ove c̄ accord 20 Eliz. Dyer (e) 363. & vide 3 E. 3. 51. Recompēce in value sur

(a) Dyer 49. pl. 12.

(b) 7 H.6. 42. a.b. 8 Co. 142.b. 143.b. Br. Error 66. 1 Rol. 777, 778, 308.

(c) 8 Co. 143. a. Cr. El. 270, 278. Moor 270. 1 Rol. 778. Dyer 223. pl. 26.

(d) 8 Co. 96. b. 143. a. 1 Rol. 778. Dyer 363. pl. 24. Moor 573. Jenk. Cent. 264. 2 Leon. 92. 3 Leon. 89. 90. Godb. 27, 28. Yelv. 180. Goldsb. 103, 104. Cr. Eliz. 278. Cr. Jac. 246.

(e) Dyer 363. pl. 24

sur voucher un foits loyalment execute, ne serra devesse, coment que le title del demandant al terre que il recover soit apres disaffirm & evict. ¶ 3. Fuit resolve que revocation per 3. si nul execution ust estre ewe, ust estre sufficient; car si 3 font (a) revocation, 2 font ceo: Mes si les parols del clause del revocation ussoint estre per eux jointment ou severalment, donques le 3 de eux ne puissoit aver ceo fait, car ceo nad estre nemy jointment nec severalment; Et ove ceo accord 36 H.8. Dyer 61, 62. & 27 H. 8. Et issint nota bon (b) diversity.

(a) Cr. Jac. 254. 1 Rol. 328. (b) Co. Lit. 181.b. 1 Rol. 329. Yelv. 25, 26. Noy 47. Hutt. 127. 1 Rol. Rep. 299. 2 Inst. 38. 27 H. 8. 6. b. 11 Co. 92.a. Dyer 62. pl. 34. 2 Rol. Rep. 101. 3 Bulstr. 210.

Mich. ii Jac. Reg.

In Bank le Roy.

Semaines Case.

AN Action sur le case enter Peter Semaine Plaintiff, & Richard Gresham Defendant, le case fuit tiel; Le Defendant & un George Berisford fueront Jointenants dun meason en le Black-Fryars London pur ans; George Berisford conust un recognisance en nature de Statute Staple al Plaintiff, & esteant possesse de divers biens en le dit meason morust, per que le Defendant fuit possesse del meason per le survivor, en que les dits biens continue, & remain; Le Plaintiff sua proces del extent sur le dit Statute al Viscount de Londres; Le Viscount retorne le conusor morust; sur q̃ le Pl' ad auter bre dextender touts les terres que il ad al jour del statute conus, ou a ascun temps puis, & touts ses biens, queux il ad jour de son mort, quel brief le Pl' deliver al Viscount de Londres, & dit a luy, que divers biens, queux fuer al dit George Berisford al temps de son mort, fuer en le dit meason, & sur ceo le Viscount per vertue del dit brief, charge un Jury de fair inquiry solonq; le dit brief, & le Viscount & Jury accesserunt ad domum prædictam ostio domus prædict' aperto existen̄, & bonis prædict' in p̃dicto domo tunc existen̄, & ils offer a enter en le dit meason dextender les

Co. Ent. 12. pl. 11. Moor 668. Yelv. 28, 29. Cr. El. 908, 909. 2 Rol. Rep. 294.

les biẽs solonq; le dit bre; Et le Def. pmissorum non ignarus, intẽdant a disturber executiõ, ostio pd' domus tunc aperto existen, claudebat contra Vicecom & Jurator pd', p q̃ ils ne poiẽt vener & extẽder les dits biẽs, ne viscoũt eux seisie, p q̃ il pde le benefit & psit de s bre, &c. Et en cest case ceux points fuer resolve. ¶ Primerm̃t, Que le meason de chescũ est a luy cõe son (a) castle & fortres, sibn p s defence encoũter injury & violence, cõe p son repose; Et com̃t q̃ en ley le vie de hõe est chose precious, & favor en la ley, issint q̃ com̃t q̃ home tua aut en son defence, ou tua un p infortunium, sans ascũ entent, uncore c̃ est felony, & en tiels cases il forfeitra ses biens & chateux, p le grand regard q̃ le ley ad al vie de home. Mes si larons vient al (c) meason dun, a luy robber, ou murtherer, & le owner ou ses servãts tua ascun des larons en defence de luy, & son meason, ceo nest felony, ne il pdra riẽns; & ove c̃ accord 3 E. 3. tit. Coron 303. & 305. & 26 Lib. Ass. pl. 23. Issint est tenus en 21 H. 7. 39. chescun poit fair assembly des gents de ses amies & vicines, (d) a garder son meason encountr violence; Mes ne poit assembler eux daler ove luy al market, (e) ou allors, p safegard de luy encoũtr violẽnce; Et le reason de tout c̃ est, p c̃ q̃ domus sua cuiq; tutissimum refugium. ¶ 2. Fuit resolve, qñt ascũ meason est record p ascũ real act, ou p Eject. firmæ, le visc poit infreindr le measõ & delid le seisin ou possess. al dñant ou Pl, car les pols del bre sont, habere facias seisinã, ou possessionẽ, &c. & aps Judgm̃t, c̃ nest le meason en dct & Judgm̃t del ley del tenãt ou Def. ¶ 3. En touts cases qñt le Roy (f) est pty, le visc (si nul huis soit ovt) poit enfreindr le meason del pty, ou a luy pndr, ou a fair aut execution del pces les Roy, sil auterm̃t ne poit enter en ceo; Mes devãt q̃ il infreint c̃, il doit signifie le cause de son vent, & fair request de over le huise, & c̃ appt bien p lestat de Westm 1. c. 17. (q̃ nest forsq; affirmance del common ley) come appt icy aps, car le ley sans default en le owner abhor un destruct' ou debrus. dascũ meason (q̃ est fait p habitac & safety de home) p q̃ grand damage & inconvenience poit ensuer al party, qñt nul default est en luy, car peradventur il ne scavoit proces del ley, de q̃l sil avoit notice, est destr psume q̃ il voit ceo obeier; & ceo appt p le livre en 18 E. (g) 2. tit. Exec 252. ou est dit q̃ le ministr le Roy q̃ viẽt a fair execuc, &c. puit over les huis firmes, & les debrus. sil ne puit aver les clief; q̃l pve, q̃ il primerment coviẽt dver eux, 7 E. 3. (h) 16. J. naufr R. issint q̃ il est en dang de mort, J. sua & sur c̃ huy & cry est levy, J. soy retreat en la meas. de T. ceux q̃ psue si le meason soit defend vs eux p forc (q̃l pve q̃ primerm̃t reqst doit

estre

(a) 3 Inst. 162. Cr. El. 753. 2 Co. 32. a. 7 Co. 6. a. 8 Co. 126. a. 11 Co. 82. a. 1 Bulst. 146. Stanf. Cor. 14. b.
(b) Co. Lit. 391. a. Hales Pl. Cor. 32. Stanf. Cor. 15. c. 16. d.
(c) 3 Inst. 56. Stanf. Cor. 14. a. Corone 192. 3 E. 3. Corone 205, 330. Br. Corone 100. 1 Rol. Rep. 182. 22 H. 8. c. 5.
(d) 11 Co. 82. b. Br. Riots, &c. 1. 21 H. 7. 39. a. Fitz. Trespass 246. 3 Inst. 161, 162.
(e) 11 Co. 82. b. 1 Rol. Rep. 182.
(f) O. Benl. 121. 1 Bulstr. 146. Cr. El. 908, 909. Moor 606, 668. Yelv. 28, 29. Cr. Car. 537, 538. 3 Inst. 161. Dyer 36. pl. 40. 12 Co. 131. 4 Inst. 177. Goldsb. 79. 2 Jones 233, 234. 4 Leon. 41. 13 E. 4. 9. a.
(g) Yelv. 29. Apres 92. b. Cr. El. 909. Moor 668.
(h) 4 Inst. 177.

estre fait) poient loyalm̄t infreinder le meason de T. car c̄ est al suit le Roy. 27 Ass. pl. 66. le Bailiff le Roy poit distrein p̄ issues en (a) Sanctuary. 27 Ass. pl. 35. p force de Capias sur indictm̄t de trn̄s, le Viscount poit (b) infreinder son meason p̄ luy arrester; Mes en tiel case, sil infreint le meason, qn̄t il poit enter sans c̄ debruser (hoc est, sur request fait, ou sil poit ob̄er le huis sans infreinder) il est trespassor. 41 Ass. pl. 17. sur un issue join sur un travers dun office en le Chancery, Venire facias fuit agard retornable en Bank le Roy, sans mentioner de non (c) omittas ꝑpter aliquā libertatē, uncore entant q̄ le Roy est pty, le b̄re de soy m̄ est non omittas ꝑter aliquā libertatem, 9 E. 4. 9. q̄ p̄ felony (d) ou suspicion de felony, lofficer le Roy poit debruser meason p̄ p̄ndr̄ le felon, & c̄ p̄ deux reasons; 1. Pur le cōmon Weal; car est p̄ le Weal publiq; a p̄nder felons; 2. En chescū felony le Roy ad inter̄est, & ou le Roy ad inter̄est, le b̄re est, non omittas ꝑpter aliquā libertatē, & issint le liberty ou priviledge dun meason ne tiendr̄ v̄s le Roy. ¶ 4. En touts cases, qn̄t le huis est (e) ob̄t, le Visc̄ poit ent̄ en la meason, & fair̄ execution al suit de ascū subject, ou del corps, ou des biens; & issint poit le Sn̄r en tiel case enter en la meason (f) & distrein p̄ son rent ou service. 38 H. 6. 26. a. 8 E. 2. tit. Distr̄ 21. & 33 E. 3. Avowry 256. le Sn̄r poit distrein en le meason, com̄t q̄ t̄res sont auxy ten⁹ en q̄ il poit distrein, vide 29 (g) Ass. pl. 49. Mes le grand q̄stion en cest case fuit, si p force de Capias, ou Fieri facias al suit del party, le visc̄ apres request fait a ob̄er le huis, & denial fait, poit infreinder le meason del Def. & fair̄ execution, si le huis ne soit ob̄t. Et fuit object, q̄ le Visc̄ c̄ biē fair̄ p̄ div̄s causes, 1. Pur c̄ q̄ est p proces del ley; Et fuit dit, q̄ voit estre grant del aut̄ pt q̄ un meason nest un liberty; car si Fieri facias ou Capias soit agard al Visc̄ al suit del cōmon pson, & il fait un Mandate al Bailiff dū liberty q̄ ad retorn des b̄res, q̄ nullū dedit responsum, en cest case aut̄ b̄re issera ove Non omittas ꝑpter aliquā libertatē, unc̄ (voile estr̄ del dit aut̄ pt) q̄ il ne infreindr̄ le meason del Def. cōe il ferra dun aut̄ liberty. Car ou en le County de Suff. sont 2 liberties, s. lun de S. Ed. de Bury, lauter de S. Etheldred de Ely, mittomus q̄ Cap̄ viēt al suit de A. al Visc̄ de Suff. a prender le corps de B. le Visc̄ fait mandate al Bailiff del liberty de S. Etheldred, q̄ fait nul respons; en cest case le Pl' av̄a b̄re de Non omittas, & p force de ceo il poit arrest le Def. deins le franchise de Bury, coment que nul default fuit en luy, 2. Admit q̄ ceo soit un liberty, le Def. mesme ne unques prendra benefit dun liberty: Come

(a) Br. Distress 35. Br. Trespas 251.
(b) Fitz. Trespas 232. Br. Trespas 248.
(c) Br. Prerogative le Roy 109. Br. Franchise 18. Br. Process 102. Fitz. Prerogative 21.
(d) 13 E. 4. 9. a. Fitz. Bar 110. 4 Inst. 177. 1 Bulst. 146. 2 Bulst. 61.
(e) 1 Brownl. 50. Cr. Jac. 486.
(f) Br. Trespas 226. Br. Issue 26.
(g) Br. Disseisor 52. Fitz. Assise 286.

si Bailiff dun liberty soit Def. en ascun action, & ꝓces de Capias ou Fieri fac̃ vient al visc̃ vers luy, le viscont executera le ꝓces vers luy; car un liberty est touts foits p̃ le benefit dun estrãger al action. 3. Pur necessity le visc̃ infriend le meason del Def. ap̃s tiel denial, cõe est avãtdit, car al cõmon ley hõe navera ascũ execution p̃ det, mes solemt des biens del Def. Mittomus donq̃s q̃ le Def. voil detein touts ses biens en son meason, & issint le Def. m̃ ꝑ son act demesne p̃ventera non solemt le Pl' de son just & voier det, mes auxy serra grand imputation al ley, q̃ serra tant defect en c̃, q̃ en tiel case le Pl' ꝑ tiel shift sans default en luy ser̃ forsclose de son execution; Et le liure en

(a) Yelv. 29. Devant 91. b. Moor 668. Cr. El. 909. O. Benl. 121.

18 E. 2. tit. (a) Execution 252. fuit cite a prover ceo, ou est dit, q̃ ne list al ascun a disturber lexecuc̃ le minister le Roy, q̃ vient a executer le ꝓces del Roy; car si home poit extorter en tiel manner, home navera jammes execution; mes la appiert (come ad estre dit) q̃ coviẽt estre req̃st fait devant q̃ le visc̃ infreint le meason. 4. Fuit dit, q̃ le visc̃ fuit officer de grand authority, en q̃ le ley repose grand trust & confidence, & sont de sufficiency a responder p̃ touts torts q̃ serrõt faits, & ils ount custodiam Comitatus, & p̃ c̃ ne serra p̃sume q̃ ils voilẽt abuser le meason dascũ ꝑ colour de feasant de lour office en execution des b̃res de Roy, encounter le duty de lour office, & lour serement auxy.

Le Resolution del Court.

(b) 1 Jones 429, 430. 1 Brownl. 50. 1 Bulst. 146. Cr. Jac. 556. O. Benl. 121. 4 Inst. 177. Palm. 53. Dyer 36. pl. 41. Moor 668. Cr. Car. 537, 538. Cr. El. 908, 909. Yelv. 29. Hob. 62, 263, 264. 4 Leon. 41. 11 Co. 82. March. 3, 4. 18 E. 4. 4. a. Br. Execution 100. Br. Trespas 390.

(c) 9 Co. 66. a. Cr. Jac. 280, 486. Jenk. Cent. 291. Hales Pl. Cor. 45. Owen 63.

Mes fuit resolve, q̃ ne list al viscont (sur request fait & denier) al suit dun (b) cõmon person, a infreinder le meason del Def. s. a executer ascũ proces al suit dascun subject, car sur c̃ ensuer̃ grand inconvenience, q̃ homes sibien en le (c) nuict, come en le jour, avont lour measons (q̃ sont lour castels) enfreint, ꝑ pretext de q̃l grand mischief & damage poit eschier, car ꝑ colour de ceo sur ascun fained suit, le meason dascun home a ascun temps poit estre infreint, q̃nt le Def. poit estre arrest aylors, & issint homes ne ser̃ en safety ou repose en lour measons demesne. Et coment q̃ le visc̃ soit officer de grãd authority & confidẽce, uncor̃ appt ꝑ experiẽce, q̃ les b̃res le Roy sont execute & servy ꝑ bailies, ꝑsons de petit ou nul value, & nest dest̃ p̃sume, q̃ tout le substãce dun hõe soit solemt en s̃ meason, ne q̃ hõe voil' ꝑder s̃ liberty, q̃ est cy inestimabl', sil ad a satisfier s̃ det. Et touts les dits liures q̃ ꝓve q̃ q̃nt le ꝓces touch le Roy, q̃ le visc̃ poit infreind le measõ implyõt q̃ al suit del ꝑty le measõ ne ser̃ infreint, car autmt le addic̃ del suit le Roy ser̃ nugatiõ. Et ove cest resoluc̃ accord le

(d) 13 E. 4. 9. a. Devant 92. a. Fitz. Bar 110. 4 Inst. 177.

liure en (d) 9 E. 4. 9. Et lexp̃sse diversity la prise enter case de felony, q̃ come ad estre dit, concern le common weal, & le suit

dascun

dascun subject, q̃ est pur le pticular interest del party, come la est dit en (a) 18 E. 4. 4. a. p Litt. & touts ses compaignions, est resolve, q̃ le viscont ne poit infreinder le meason del Def. p force dun Fieri facias, mes il est trespasser p̃ le infreinder, & uncore lexecution q̃ il adonq̃s fait en le meason est bon. Et fuit dit, q̃ le dit liure de (b) 18 E. 2. fuit forsq̃ un bre note, & nemy ascun case judicialmt adjudge, & nappiert a q̃ suit le case est entend, mes est un observation ou collection (come semble) del Reporter; Et si soit entend dun Quo (c) minus, ou auter action, en q̃ le Roy est party, ou est daver benefit, le liure est bon ley. ¶ 5. Fuit resolve, q̃ le meason dascun nest castle ou priviledge forsq̃ p̃ luy m, & nextend a ptecter ascun (c) person q̃ fua en son meason, ou les biens dascun auter q̃ sont port & convey en son meason, a pventer loyal execution, a escaper le ordinary proces del ley, car le priviledge de son meason extend sole a luy & son family, & a ses proper biens, ou a ceux qux sont loyalmt & sans fraud & covin la, & p̃ c en tiels cases aps denial sur request fait, le viscont poit enfreinder le meason, & c est pve p lestatute de Westm̃ 1. cap. (e) 17. p que est declar, q̃ le viscont poit infreinder meason ou castle a fair replevin, quant les biens dun auter, q̃ il ad distrein, sont per luy convey a son meason ou castle a preventer le owner daver replevin de ses biens, quel act est forsq̃ affirmation del common ley en tiel points. Mes appiert la, q̃ devant le viscont en tiel case infreint le meason, il doit demand les biens destre deliver a luy, car les parols del statute sont (puis q̃ les avers serr solement demand p les viscounts, &c.) ¶ 6. Fuit resolve, admittant q̃ le viscont apres denial fait, poit aver infreint le meason, come le counsel del Pl' ptend, q̃ il poit, donq̃s ensuist q̃ il nad fait son (f) duty, car nappiert q̃ il ad fait ascun reqst a overer le huis del meason. Aury le Def. (come cest case est) ad fait c q̃ il bien poit fair p la ley, s. a firmer le huis de son meason demesne. Darraignmt le general allegation, (g) præmissorum non ignarus, ne fuit sufficient en cest case, ou le notice des premisses est cy material, mes en cest case c covient daver estre certeinment & directment alledge, car sans notice del proces del ley, & del vener del viscont ove le jury a execute c, le firmer del huis de son meason demesne fuit loyal. Et Judgment fuit done envers le Plaintiff.

(a) Cr. Eliz. 909. Yelv. 29. Br. Execution 100. Br. Trespass 390.

(b) 18 E. 2. Execution 252. Yelv. 29. Moor 668. Cr. El. 909. Devant 91. b. 92. b. O. Benl. 121.

(c) Plowd. 208. a.

(d) Cr. Car. 544.

(e) 2 Inst. 192, 193, 194.

(f) Stiles 447.

(g) Hard. 2.

Mod. Rep. 286.

Trin. xxxix Eliz.

In Lexchequer.

Barwick's Case.

1 Co. 43.b. Moor 393, 394. 10 Co. 68. a. 2 Rol. Rep. 273. 3 Keb. 414. Stiles 189. Hardr. 499. Lane 11.

IN information de Intrusion en un mease & certein terres en Sutton en Galtres en le County de York, vers Peter Berwick & auters, le case fuit tiel; Edw. le 6. ꝑ ses Letters Patents 19 Maii anno 4. demise le Manor de Sutton, dount, &c. al Thomas Tirrel ꝓ 21 ans, & puis, le Roigne Eliz. ayant le reversion, ꝑ ses Letters Patents 11 Maii en le 10 an de sa Raigne, recitant le dit lease, demise le dit Manor al Humfrey Barwick ꝓ 21 ans en reversion, Humfry Barwick 2 August. 10 Eliz. ꝑ Indenture grant a un Story un mease & croft, parcel del dit Manor, del Feast de St. Michael 1597 ꝓ 21 ans, & 20 Maii 16 Eliz. demise al John Ragget auter ꝑcel del dit Manor pur 21 ans del dit Feast de St. Michael, & auter demise del auter parcel a William Simpson pur autiel term; Et puis le Roigne Eliz. 21 Novemb. anno Regni sui 23. per ses Letters Patents (recitant (a) le dit lease al Humfrey Barwick) pro & in consideratione sursum (b) redditionis totius status, tituli, termini annorum, & interesse, de & in præmiss. ꝑ ꝓdict' Literas Patentes eidem Humfrido concess. demise & grant le dit Manor al dit Humf. ꝓ 21 ans, ou en verity le dit Humf. nad surrendᵗ tout le dit term a luy granta, car il ad fait divꝰse assignmẽts & demises, come est avantdit; Et puis le Roigne Eliz. 28 Julii anno Regni sui 26. en consideration del surrẽder des dits Letters Patẽts de an. 23 Eliz. & de tout lestate, term, & interest ꝑ c̄ demise & grant, demisa & granta le dit Manor al dit Humfrey, Habendum a (c) die confectionis earũdem Literarum Patentium, ꝓ les vies de trois auters, & le survivor de eux: Et desouth cest darrein demise les Defendants claim;

(a) Cr. Car. 198.

(b) Godb. 442.

(c) Alein 77.

claim; Et si cest darrein lease fuit done, ou nemy, fuit le question. Et aps plusors argumts al barr & al bench, Judgmt fuit done p Sir William Periam Chief Baron, & tout le Court del Exchequer, p̄ le Roigne. Et en cest case deux points fuer resolve. ¶ 1. Entāt q̄ le valuable & material consideration des dits Letters Patents p̄ trois vies esteāt faux, & p c̄ le Roigñ deceive, p consequence le dit demise p̄ trois vies fuit void, car le consideration fuit, q̄ le dit former demise serra surrend, & en verity le former demise fuit void, issint le cause & motive del fesans del lease fuit faux, & a cest cause le dit darrein lease fait sur tiel consideration fuit void auxy: Et le former case de añ 23 Eliz. fuit void, entant q̄ c̄ fuit fait en consideration del surrendr de tout lestate, term & interest demise per les Letters Patents de añ 10 Eliz. ou en verity, tout lestate ne fuit surrendre; car il ad fait divers demises & grants de certein pcels del dit Manor devant, & c̄ poit estr fort mischievous al Roigñ, car son lessee poit demise tout la terre a luy demise, savant un petit parcel, & pur un petit term en reversion, & puis surrend al Roigñ, & prist novel lease ove reservation del rēt, & condition de reentry, en cest case neq; le novel rent, neq; le condition extendera al estates & interests derive hors del primer lease. Et est un Maxim, que si le consideration q̄ est p̄ le benefit le Roigñ, soit ceo execute ou executory, ou soit c̄ de record, ou nient de record, ne soit voyer ou nient duemt perform, ou si prejudice poit accrescer al Roigne per reason de non performance de ceo, les Letters Patents sont void. Et en le case al barre fuit p̄ ladvantage & benefit le Roigne, q̄ tout le former term de añ 10 Eliz. serr surendre accordant al expresse consideration, al entent q̄ le rent & condition reserve sur le novel lease de añ 23. extender a tout le terr demise, solonq; le purport & voier intētion des dits Letters Patēts. Auxy qnt le Roigne fist le lease p̄ trois vies en cōsideration del surrēder del dit lease de añ 23. q̄l lease fuit void, de c̄ ensuit q̄ le demise fait en cōsideration de cest surrēder, fuit void auxy; pur c̄ que le Roigne fuit deceive en le cōsideration de sa demise, car le surrēder del form term fuit un principal motive a inciter la Roigñ a fair novel lease, & padventur a mitigater son fine, q̄l cōsideration esteāt valuable & matial, coviēt estr voier & duement pform. ¶ 2. Fuit resolve, q̄ qnt le Roigne 28 Julii añ 26. demise le dit Manor al Humfry Barwick, Habendum sibi à die confectionis earundem Literarum Patentium, que le dit 28 jour de July mesme est sans question exclude, & que le demise ne

2 Rol. Rep. 273. Davis 40. a. 1 Co. 43. b. Lane 3, 13, 76, 109, 112. Hard. 499. Hob. 204, 230. Moor 393. Hutt. 7.

2 Rol. Rep. 273.

Dyer 352. pl. 26.

Devant 1. a. b. Co. Lit. 46. b.

ne poit commencer, ne le lessee enter devãt le 29 jour de July, car cest (a) (a) vel (ab) est dictio significativa primi termini, a quo sicut dictio (usq;) termini, ad quem, & a vel ab accipitur exclusive. ¶ 3. Fuit resolve, q̃ estate de franktenemt ne poit p le common ley cõmence (b) in futuro, mes coviẽt a prender effect maintenant en possession, revsion ou remainder. Et le diversity est inter lease p̄ vie, & lease p̄ ans; car lease p̄ ans poit cõmencer in futuro, mes nemy lease p̄ vie: Come si hõe fait lease p̄ ans, a cõmencer a Mich. pchein ensuãt, c̄ est bon: Mes si hõe fait lease p̄ vie, a cõmencer a Mich. c̄ est void; Et les reasons & causes de cest disvsity sont, 1. Pur c̄ q̃ lease pur ans poit estre fait sans livery de seisin, mes issint ne poit estat de franktenemt sans livery, ou en fait ou en ley; Et pur ceo, quant home fait lease, (c) a cõmencer a un future jour, il ne poit fait present livery a un future estate, & p̄ ceo en tiel case riens passa. Et fuit dit, q̃ Letters Patents desouth le grãd Seal amount a un livery en ley, & p̄ c̄ p Letters Patents lease ne poit estre fait p̄ vie, a cõmencer a un jour a vener. 2. Si ascun franktenemt passera maintenãt p les Letters Patents del jour a vener, donques le Roigne en le mean temps avoit pticuler * interest & term sans ascun (d) donor, ou lessor, q̃ serra encounter les rules del ley; Mes nul tiel consequent ensuet en case dun lease p̄ ans. Et p̄ c̄ fuit resolve en le case al barre, q̃ le lease pur trois vies fuit void, p̄ ceo q̃ fuit a commencer le pchein jour aps le Teste des Letters Patẽts: Et si lease sert bon, le Roigne avera interest p̄ le 28 jour, & comt q̃ le lease fuit a commencer le pchein jour aps le Teste de c̄, est tout un en ley, come si c̄ ust estre a commencer 20 ou 40 &c. jours ou ans a vener, car le distance del temps ne fait alteration del ley en tiel case. Et en cest case fuit agree, si hõe fait lease p̄ ans al A. & B. le (e) remainder a C. p̄ vie, en cest case le lessor covient fait livery al A. & B. devant lour entry, & p le livery al A. & B. C. prendra present estate p̄ vie p voy de remainder p force del livery fait al lessees p̄ ans, Et ove ceo accord Littleton libro primo f. 12.b. Et en tiel case disvsity fuit prise per ascuns enter deux joint (f) Attornies, queux ount expres authority a prender livery & seisin p fait, & deux joint lessees en le case avantdit, q̃ ount power a receiver livery p̄ le benefit dun auter per garrant en ley, car livery fait a un attourney en nosme dambideux nest bon, car il ne pursue son expres garrant, car il mesme solement nad garranty, car ils ambideux fount q̃ un Attorney. Mes en le case de deux joint lessees,

(a) Stiles 189. Cr. Car. 94. Moor 759.

(b) Moor 393, 394, 423, 424, 881. Cr. El. 29, 254, 255, 450, 585. 2 Anders. 29. Cr. Car. 547, 548. Cr. Jac. 376, 563. 1 Jones 437. Godb. 265, 451. 1 Rol. Rep. 109, 110, 138, 253, 254, 256, 261. 4 Leon. 8. Co. Lit. 48.b. 11 Co. 77.a. 78.a. 2 Rol. 10, 66. Br. Grant 60. Br. Patent 29. 2 Bulst. 272, 273, 274, 275, 303. Hob. 171. Palm. 29, 30. Bridg. 108, 109. 2 Brownl. 299, 300 Hetl. 23. 2 Co. 55.a

(c) Cr. Jac. 153, 563. Cr. Car. 94, 388.

* Perk. Sect. 704.

(d) Palm. 30.

(e) Co. Lit. 49. b.

(f) Co. Lit. 49. b. Palm. 23.

lessees, le livery fait al un en nosme de ambideux est bon, car ils deux ount interest in la terre devant lour entry, & le livery al un en nosme de ambideux fait actuel possession en ambideux, q̃ est sufficient a supporter le remainder a C; Et en lun case, le livery est fait al lessees q̃ ount interest, & en lauter a cestuy q̃ fait le garrant dattorny p̃ son attorneys, q̃ur nont forsq; nude authority; Et com̃t q̃ livery ne poit estre fait al un en nosme de luy, & dun auter q̃ est absent, per q̃ ascũ estate de frankteneṁt passeṙ a cestuy q̃ est absent, sans fait, p̃ ceo q̃ son estate est solemñt a commencer per le livery; Uncore quant lease est fait al deux pur ans sans fait, le remainder p̃ vie, les lessees maintenant ount interest en le terre devant ascun livery fait: Et pur ceo, livery fait a un que ad interest, en nosme de luy & lauter, suffist a ceo purpose. Co. Lit. 49. b. Co. Lit. 49. b.

Nota bon Lecteur, Jeo ay report cest case, al intent q̃ les imperfections en les Letters Patents faits al Barwick, per q̃ur il perdre son lease, serront avoid en leases, (& principalment al povers homes) destre faits en temps a veigner.

Mich.

Mich. xxxix & xl Eliz.

In Bank le Roy.

Goodal's Case.

Jenk. Cent. 261. 1 Rol. 408, 421. Goldsb. 176, 177. Godb. 299, 449. Cr. El. 383, 384. Lit. Rep. 105, 175. Moor 708, 709. Poph. 99, 100.

INter Cutbert Goodal Pl', & John Wyat Def. en Ejectione firmæ del terres en Aylesbury, en le County de Buck. (q̃ commence Hill. 37. Rot. 805.) Le Defendant plead non culp: Et les Jurors done un especial Verdict a a cest effect; Sir John Packington fuit seisie des tenements avantdits en fee, & per son fait indent primo die Julii anno 35 Eliz. de ceo enfeoff Robert Woodliff & ses heirs; Proviso semper quod si præfat Johannes infra unum annum post decessum ipsius Roberti solvat, seu solvi faciat hæred', executor, sive administrator ipsius Roberti summ̃ centũ marcarũ legalis monet Angliæ, quod tunc & deinceps præsens carta indentata & seisina inde habita, vacua sit, & nullius vigoris; Robert Woodliff de ceo enfeoffa Ed. Woodliff, que estate per divers mean conveiances Thomas Goodal le lessor del Plaintiff avoit: Et puis, s. 7 Januarii anno 35. le dit Robert Woodliff morust, apres que mort, Drue Woodliff esteant son fits & heir, & Anne sa feme prister Letters dadministration de ses biens, per les queux Drue & Anne fesoient Letter dattorney al Thomas Goodal, a demander & receiver les dits 100 marks, sur le dit proviso ou condition, de quel le dit Thomas Goodal dona notice al Sir John Packington; Et puis & deins le dit an, fuit agree inter le dit Sir John & le dit Drue, que le dit Sir John patera al dit Drue forsq; 32 l. del dit 100 marks, & nient pluis, & uncore en appearance pur le melior performance del condition, que lentire summ de 100 marks serra pay & que le residue ouster 32 l. serra repay a Sir John, sur q̃ Sir John paia deins le dit an 100 marks al dit Drue, & maintenant tout fuit repay al dit Sir John forsq; le dit 32 l.

solonq;

solonque lour precedent agréement avantdit, & puis le dit Sir John reenter en les dits tenements, pretendant que il ad perform le condition; sur que le dit Thomas Goodal enter, & fist le lease al Plaintiff, que enter, & fuit possesse quousque le dit John Wyat luy ousta (sans conveyer a le dit Wyat ascun interest ou authority desouth Sir John Packington) Mes le Jury conclude, Et si super totam materiam, &c. prædict' solutio prædict' centum marcarum per prædict' Johannem Packington Militem præfato Drugoni fact', sit bona & legalis solutio in lege earundem centum marcarum, secundum formam provisionis prædict', Juratores prædicti ignorant. Et si, &c. issint que le doubt que le Jury conceive, fuit solement sur le dit payment, & le quel le dit payment (come est avantdit) fuit en ley sufficient a doner title de entry per force del dit condition, al dit Sir John Packington, sur le dit Thomas Goodal. Et fuit object del part le Defendant, que coment que devant le payment fuit agrée enter le dit Sir John Packington, & le dit Drue Woodliff, que le dit Drue avera forsque 32 l. del dit 100 Marks, uncore Sir John paya tout, & Drue receive tout, & le property de touts les deniers fueront en Drue, & si Drue ne voille aver repay a luy le residue ouster 32 l. Sir John navoit, ascun remedy forsque action sur son case (si ascun action sur le matter voille.) Et a cest cause ils conclude, que ceo fuit bon payment a satisfier le dit condition. Mes quant a ceo fuit respond & resolve per Popham Chief Justice, & totam Curiam, que ceo ne fuit ascun (a) performance del condition, & lour reason fuit, pur ceo que un estate de inheritance fuit per le payment des dits deniers al heir, destre devest hors del Thomas Goodal lassignee del terre, & pur ceo, le condition covient estre perform en verity, per voyer & effectuel payment, & nemy per un shadow ou colour de payment; Et en le case al barre, le precedent agréement guide le subsequent payment, & le entent de eux fuit, que forsque le dit 32 l. serra enjoy & retain, coment que pluis fuit en apparance paye. Mes lestates de (b) tierce persons ne sert devest per colourable ou covenous payments, mes per voier & effectual payments, come est avantdit. Vide 19 Hen. 6. fol. 54. 20 Edw. 3. titulo (c) Accompt 79. Et 18 Edwardi 4. fol. 18. ou appiert, que conditions doient estre perform voierment & effectualment, Quia factum non dicitur

(a) Co.Lit. 209. b. 2 Rol. Rep. 303, 403. Godb. 299. Moor 709. Jenk. Cent. 261. Lane 48. Cr.El. 383, 384. Cr.Jac. 451. Lit. Rep. 129, 130.

(b) Jenk.Cent. 261 Poph. 100. 8 Co. 133. a. 2 Rol.Rep. 303. Lane 48. Co. Lit. 209. b.
(c) Co.Lit. 129.

dicitur, quod non perseverat. ¶ 2. Fuit resolve, q̃ si touts les deniers ont estre pay al (a) heir bona fide (comt q̃ Rob. Woodliff son pere ad cõvey s̃ entire estate en le terr̃ ouster) ad estre sufficiẽt, car le heir est pson expressemt nosme en le condition, a q̃ le paymt serra fait, & le feoffor est estranger al conveyãce, q̃ le feoffée & ses assignées fesoiẽt, & le feoffor ne pndra notice a son peril del validity de eux, ne des conditions ou limitations annexe al eux. ¶ 3. Fuit resolve, q̃ come cest cõdition est en le case le barr̃, le feoffor ne poit c̄ ad pay al Goodal (b) lassignée del terre, car heirs, executors ou administrators fuer̃ expresse en le condition, & le assignée nemy, cõe en le case de Littleton lib. 3. cap. Condition f. 78. si le condition fuit, q̃ si le feoffor paiera le feoffée, ou a ses heirs, tiel summ a tiel jour, la aps le mort del feoffée, sil morust devant le jour limit, le paymt doit estre fait al (c) heir al jour assesse, ou cest parol (doit) q̃ import necessity en ley, fuit observe; Et p c̄ en tiel case les deniers ne serr̃ pay al executors; Et issint le doubt en 12 E. 3. tit. Condition 9. Et (d) Dyer 2 Eliz. 181. bien resolve. Mes (e) lassignée del terre, comt q̃ il ne soit nosme in le condition inter les psons, q̃ payer̃ les deniers, uncore bien poit payer les deniers pur salvation de son tenure, come Lit. (f) dit eodem lib. f. 77. Issint nota diversity, q̃ le deniers ne serra pay al assignée del terre sans nosmer de luy in le condition, car la le payment va al defeasance del inheritãce, mes les deniers serr̃ (f) pay p lassignée in salvation de s̃ inheritãce. Mich. 23 & 24. in le Court de Gards le case fuit tiel: Edw. (g) Randal seisie in fée de certain terres deins le County de Surry, p fait endent & inrolle solonq lestatute, covenant ove John Brown, q̃ si le dit Brown payer̃ al dit Randal, ses heirs ou assignes, 400 l. le 4 jour de March, donques prochein ensuant, a un certain lieu, que donques le dit Edward & ses heirs estoyer̃ seisie del dit terre al oeps de Brown & ses heirs, & devant le dit jour, Edward Randal morust, & aiant issue fits fist son volunt in escript, & fist Alice sa feme, Ralph Hare & Hugh Hare ses executors, & devise le dit terre a sa feme durant le minority de son fits, & morust son issue deins age, & in gard le Roigne, & devant le jour la feme renounce, & prist Letters de Administration; Et ore le question fuit, a que les deniers serra paie. Et en cest case trois points fuer̃ resolve per les Chief Justices, Wray & Dyer, & tout le Court de Gards, cestascavoir, que en le dit case, ceux parols (assignes) serra solement

(a) Co. Lit. 209. b. 210. a. Jenk. Cent. 261. 1 Rol. 421. Goldsb. 177, 178. Poph. 100. Hard. 11.

(b) Jenk. Cent. 261. 1 Rol. 421. Cr. El. 384.

(c) Lit. Sect. 339. Co. Lit. 210. a.

(d) Dyer 181. pl. 50. Owen 10.

(e) Hardr. 425. Co. Lit. 207. b.

(f) Lit. Sect. 336.

(f) Co. Lit. 207. b.

(g) Randals Case, Mich. 23 & 24 El. en le Court de Gards. Moor 243, 709. Co. Lit. 210. a. Hardr. 95. Palm. 482.

ment intend des assignees del estate de Edward Randal, car il ad estate in luy assignable, & le ley ne unques (a) trovet un assignée in ley, quant la poit estre assignée in fact: Mes si Edward Randal ad fait feoffment in fée, sur condition que le feoffée paiet les deniers al feoffor, ses heirs ou assigns, &c. la pur ceo q̃ il depart ove son entier estate in fee, & nad forsq; nude condition, que il ne poit assigner ouster, la ley que ne unques rejectet ascun parol, sil per ascun reasonable construction poit prender effect, serra construction quel person sert pluis apt, come son assignee in ley a receiv̄ les dits deniers; Et ceux le ley adjudge destre ses (b) Executors, pur ceo que ils representont le person del Testator pur touts biens & chateux, & in tiel case le feoffor ne poit aver ascun assignee in fait: Et issint bon diversity, & ove c̄ accord, 27 (c) H. 8. 2. a. ¶ 2. Fuit resolve, in le dit case de Randal, que la feme ayant per le devise forsq; particular interest en la terre, ne fuit assignee del terre deins le proviso. Issint si le dit Edward ad fait estate pur vie ou ans, &c. car nul serra assignée in cest case: Mes quant le covenantor depart ove son entier estate, come sil fait feoffment in fee, don in tail, ou lease pur vie, ove le rem̄ ouster in fee, in tiel case le lessee pur vie, ou donee in tail est lassignee; Mes cy long, come le covenantor ad reversion remainãt in luy, le payment covient estre fait a luy. Issint fuit dit, que si Edward Randal ad fait assignment de son entier estate in part, cy longe come ascun part remain ove Edward Randal, le tender covient destre fait a luy, ou ses heirs. ¶ 3. Fuit resolve, in le dit case de Randal, que le tender covient destre fait al (d) heir, & nemy al Executors, pur ceo que heir fuit expressement nosme, que exclude Executors & Administrators. Et (e) expressum facit cessare tacitum. ¶ 4. Fuit resolve, que coment que in le case al barre, nul title fuit trove pur le Defendant, mes est come un mere stranger, uncore le Court in un special (f) verdict ne unques doubtet, mes solem̄t de c̄, dont les Jurors ount conceive doubt: Et pur ceo, intant que ils relient & conclude sur le paym̄t, si ceo soit bon performance del condition ou nemy; le Court ne doient doner Judgment, tanq; ils ount resolve c̄, q̃ les Jurors ount referre al lour consideration, & touts auters matters serrõt intend & supply, forsq; solement ceo que les Jurors ount referre al consideration del Court. Et issint fuit adjudge Mich. 30 & 31 in Bank le Roy, inter (g) Scovel & Cabel. Et puis Judgment fuit done pur Cuthbert Goodale le

(a) Co.Lit.210.a.

(b) Co.Lit.209.a.b

(c) Br. Condition 5. Br. Exposition 4. Br. Deputy 1.

(d) Lit. Sect. 339. Co. Lit. 210. a.

(e) Godb. 449. Co. Lit. 210. a. 183. b. Latch 265. Carter 35. Palm. 497.

(f) Jenk. Cen. 262. Hob. 55, 262. Cr. Jac. 64, 437, 442. Cr. Car. 22, 392, 458. 2 Rol. 698, 702. Cr. El. 238, 239.

(g) Moor 268.

le Plaintiff, Sur quel Judgmt, le Defendant port Brief de Error in Lexchequer Chambre: Et tout le Court sur argument & debate del caſe la arrere, concurre in opinion ove les Justices de Bank le Roy, & affirm le Judgment. Et issint cest caſe fuit reſolve p touts les Justices Dengliterre.

27 Eliz. cap. 8.

Mich. xxxix & xl Eliz.

In Communi Banco.

Le Counteſs de Northumberland's Caſe.

(a) 2 Anderſ. 48, 49, 50, &c. Moor 455, 456. Cr. El. 518.

(b) Doctrin. placit. 64. 2 Rol. 411. Moor 456. Cr. El. 65, 518. 2 Co. 68. a.

(c) Moor 456. Cr. El 65. Fitz. Gard 100. Br. Gard 13. Br. Summons & Severance 5.

(d) Cr. El. 518. Devant 57. b. 2 Rol. 377, 378. 6 Co. 57. b. Moor 456. 2 Anderſ. 49, 50.

Fitton & le Counteſs de (a) Northumberland sa feme, Sir Thomas Cecil Chivalier, & Dorothy sa feme, William Cornwallis Armig, & Lucy sa feme, & le Dame Davers files & heirs del Seignior Lattimer, port Quare impedit vers Hall & alios, queux plead un releaſe de William Cornwallis pendant le brief, Judgment del brief: & sur ceo les Pl' demur. Et fuit adjudge, q ceo va in barre (b) forſq vs William Cornwallis & sa feme, & le brief estoiera p les auters. 45 E. 3. f. 10. a. in Caſe de (c) Gard. Et nota, que in touts caſes dun choſe entier, & en le realty, come pſentation al Esgliſe, gard del corps, &c. le releaſe de lun enuret al benefit del auts: Donqs fuit move q le count fuit insufficiet, car les Pl' in lour count entitle eux m, q le dit Seignior Lattimer fuit ſeiſie del advowſon in fee, & grant le prochein avoidance al Dean Carew, & puis l'Esgliſe esteant void, Dean Carew pſent, & issint convey le deſcent al eux, ſans alledger ascū pſentmt in le Seignior Lattimer, ou ascū aut, mes ſolemt in le grantee del pchein avoidāce; & si cest pſentmt fuit bon title pur le grantor & ses heirs, ou nemy; fuit le queſtion. Et fuit adjudge, q ceo fuit (d) ſufficient title, car il ē ſait in le droit & title

title del grantor, & pur ceo servera pur luy a faire title in Quare impedit. Mesme la ley de lessee pur ans, lessee pur vie, tenant in dower, tenant per le curtesie, gardein, tenant per Statute Merchant, Staple, &c. & ceo accord ove divers opinions in 7 E. 4. 20. 22 E. 4. 9. b. 16 H. 7. 18. a. 9 H. 7. 23. Brook tit. Quare Impedit 122. 13 Eliz. Dyer 300. Et voyer est, que est common erudition in nre liures, q ou tenant pur ans, ou pur vie, port Quare Impedit, il doit alledge seisin in cestuy q ad le fee; & hoc regulariter verum est, & uncore presentations p eux m suffist, come appiert 8 H. 5. 10. Et cest resolution ne impugne le dit rule, car presentation del grantee del prochein avoidance, esteant fait in le title & droit del grantor, servera ibien pur luy, come son presentmt demesne, & tantamount, come si grantee pur ans dun Seigniory, ou gardein, happa seisin des services, ceo serra bon seisin pur cestuy in revsion: Et ove ceo accord Fitz. Nat. Br. 179. f. 45 E. 3. 26. 11 E. 3. tit. Ass. 86. Auxy est tenus in nre liures, q si presentmt soit alledge in le lessor ou donor, & auxy in le lessee ou donee, nest double; car le presentmt del lessor, ou donor, est solemt traversable. Et vide p ambideux ceux points 18 E. 3. 15. 24 E. 3. 37. 40 E. 3. 10. 42 E. 3. 4. 33 H. 6. 32, 33, 34. 7 E. 4. 20. 9 H. 7. 23. 1 & 2 Ph. & M. Dyer 106. Nota un case adjudge in que fuit diversity des opinions in nre liures, in que le ley est ore bien resolve.

Devant 57. b. 97. b. 6 Co. 57. b.

1 Rol. Rep. 235, 3 Bulstr. 89. Cr. El. 518. Doctrin. placit. 146.

Mich. xl & xli Eliz.

In Communi Banco.

Burie's Case.

Jenk. Cent. 268, 269. Moor 225, 226, 227, 228. Noy 72. 2 Leon. 169, 170, 171, 172, &c. Dyer 179. pl. 40. 1 Anderf. 185, 186.

Enter Webber & Bury, in Ejectione firmæ, special verdict fuit done sur divorce inter Bury & sa feme, causa frigiditatis, & que le feme per trois ans, apres le marriage remansit virgo intacta propter perpetuam impotentiam generationis in viro, & quod vir fuit inaptus ad generandum. Et in ceo special verdict touts les examinations des testimoignes, sur queux le Judge in le Spirituel Court fuit move a doner son sentence, & queux fuer depose in mesme le case, per quel le perpetuel infirmity & disability de Bury ad generandum, fuit manifest (que ne fuer enter in un former verdict sur que Judgment fuit done) per queux fuit pretend, que per reason de son perpetual impotency, le issue que il ad per le 2 feme fuit illegitimate, & ceo fuit le doubt in cest cause que le Jury conceive. Et fuit adjudge, que le issue per le 2 feme fuit loyal, car est clere, que per le divorce causa frigiditatis, le marriage fuit dissolve a vinculo matrimonii, & per consequence chescun de eux poit marry arer; donques admittant que le 2 marriage fuit voidable, uncore ceo remain marriage tanque soit dissolve, & per consequence le issue, que est eewe durant le coverture, si nul divorce soit in le vie des parties, est loyal. Vide 36 Ass pl. 10. 39 E. 3. 32. 28 H. 8. tit. Bastardy 44 Bracton lib. 2. f. 92. 12 H. 7. 22. 22 E. 4. Consultation 3. Et semper præsumitur pro legitimatione puerorum; & filiatio non potest probari, & home poit estre habilis & inhabilis diversis temporibus. Et a cest cause (nient obstant les depositions per queux un natural & perpetual imbecillity, devant le primer sentence fuit depose) Judgment fuit done, que le issue fuit loyal accordant al primer Judgment done. Et sur cest Judgment brief de Error fuit port, & apres plusors arguments, & grand deliberation, le dit Judgment fuit affirm per Popham Chief Justice, & totam Curiam pur les reasons & causes avantdits.

Jenk. Cent. 268, 269.

Moor 228.

3 Bulstr. 42. 7 Co. 44. b.

Mich.

Mich. xl & xli Eliz.

In Bank le Roy.

Flower's Case.

Lancelot Flower fuit indite sur le statute de 5 Eliz. pur perjury, in donant faux evidence al grand Inquest al Sessions tenus al Wisbich, &c. sur un inditement de Riot, & cest indictment fuit remove in Bank le Roy, & le dit Flower fuit per Judgm̃t del Court discharge de cest inditem̃t, car le statute de 5 Eliz. cap. 14. ad deux branches: Le primer est vs procurors de perjury, & ceo est mat̃ depending in suit p bill, br̃e, action ou information. Issint q̃ pcurem̃t de pjury sur inditem̃t est hors de cest brãch. Le second branch (sur q̃ le dit Flower fuit indite) est purvieu vs eux q̃ commit pjury, by his or their deposition in any of the Courts above mentioned, or being examined in perpetuam rei memoriam. Et com̃t que cest clause soit general & nemy restrain per ascun parols a tiel particular suits, s. p bill, br̃e, action ou information, come le prim̃ fuit, uncore in bon construction, cest branch avera reference al prim̃, & serra expound p ceo: Et issint un part del Act (a) expoundet aut̃. Car auterm̃t le party q̃ commit le perjury, sur inditem̃t ser̃t punie p cest darrein branch, & cestuy q̃ suborn & pcure luy a commit le perjury, passet̃ ove impunity, q̃ ser̃t incounter reason & intentiõ des feasors del act. Car ascũs diont Quod plus peccat author quam actor. Et issint fuit adjudge in Mondays Case, en Bank le Roy, Mich. 36 & 37 Eliz. Et autiel Judgm̃t fuit done Trin. 39 Eliz. en Bank le Roy, en case de perjury, suppose destre commit sur un inditem̃t de felony.

3 Inst. 164. 5 El. cap. 9. 2 Rol. Rep. 175. 3 Leon. 201. Goldsb. 51.

3 Inst. 164. Cr. Jac. 120, 212.

(a) Co. Lit. 381.a. 2 Co. 55.a. 3 Co. 59.b. 8 Co. 117.a. Godb. 324, 418. 2 Rol. Rep. 356.

Hill. xl Eliz. Reg.

In Communi Banco.

Rooke's Case.

4 Inst. 275. Hardr. 478. Palm. 331.

IN Replevin en le Common Bank, ꝑ Rooks vers Withers: Le Def. justifie le priſel per lauthority de commiſſion de Sewers, direct a B. S. & auters, de ſurveyer touts mures, &c. (prout en le Commiſſion) in le River de Thames, in le Counties de Kent & Eſſex, p̄ c̄ q̃ un Carter, &c. fuit aſſeſſe a cheſcun acre pur repairer un Bank, &c. pur le non payment de quel il priſt le diſtreſs; a q̃ le Pl' reply, de ſon tort demeſne ſans tiel cauſe. Et les Jurors trove le Commiſſion, & leſtatutes de 6 H. 6. c. 5. & 23 (a) H. 8. c. 5. Et q̃ q̃ les Commiſſioners impannell' un Jury denquirer des defaults, qur p̄ſent q̃ 7 acres de prée in q̃ le diſtreſs fuit priſe, fuit ꝓchein adjoinant al river, & q̃ le bank del river fuit adjoynant al dits 7 acres, ꝑ q̃ ils tax' Carter de payer 8 s. p̄ cheſcun acre: Et le Jury trove ouſter, q̃ les occupiers des dits 7 acres, (b) avoient uſe touts foits a repairer le dit bank, aſcun foits ꝑ p̄ſentm̃t; & ouſter q̃ divs aut' perſons avoient terr̄, al quantity de 800 acres, deins m̄ le level, & ſubject al ſurrounder, ſi le dit bank ne ſoit repaire: Et ſi ceſt aſſeſſement del owner del terre ꝓchein adjoinant ſolement, ſans aſcun aſſeſſem̃t des aut's, queux avoient terres ſubject al autiel dang̃ de ſurrounder, fuit loyal, ou nemy, fuit le queſtion. Et in ceſt caſe trois points fuer̄ reſolve: ¶ 1. Que le trover de repairer, &c. ꝑ les occupiers del dit 7 acres ne fuit material, eo q̃ les (c) occupiers poient eſt' tenãts a volunt, ou aut' ꝑticulars tenãts, qur ne poiẽt ꝑ lour act lier ceſtuy q̃ ad le inheritãce. ¶ 2. Que les Cõmiſſiõs doiẽt taxer (e) touts qur ſont in dãger deſt' indamage ꝑ le non repairer owelm̃t, & nẽy cẽy q̃ ad le terr̄ ꝓchein adjoinãt al river tantſolem̃t; car leſtatut de 6 H. 6. c. 5. en q̃

(a) 10 Co. 138. a. 139. a. 140. a. 13 Co. 36. Cr. Jac. 336. 2 Bulſtr. 197. Callis Lect. f. 1.

(b) 2 Rol. Rep. 289.

(c) 2 Rol. Rep. 289.

(d) 10 Co. 139. a 1 Rol. Rep. 32. 2 Bulſtr. 199. Cr. Jac. 336.

le commission de Sewers est form & specifie, ad precise parols in m̃ le commission, q̃ nul person de ascun estate ou condition sert̃ spare, Ita quod aliquibus tenentibus terrarum sive tenementorum, &c. diviti vel pauperi, vel alteri cujuscunq; conditionis, status, vel dignitatis fuerit, qui defensionem, commodum & salvationem p prædictas Wallias, fossata, gutteras, pontes, calceta & gurgites, &c. habent, vel habere poterint, nullatenus parcatur in hac parte. Et si la ley sert̃ autermt̃, inconvenieñce poit insuer, car poit estre, q̃ le rage & force del ewe sert̃ tant, q̃ le value del terre adjoynant ne servert̃ a fait̃ les banks, &c. & p̃ c̃ les statutes voilont aver touts, q̃ sont in peril, & q̃ sont a prender commodity p le feasans del bãks, destr̃ contributory, car (b) Qui sentit commodum sentire debet & onus: Et les dits statutes require equality, q̃ bieñ accord ove le rule de equity. Vide le case de Bankrupts in le second part de mes Reports. Et vide 35 H. 8. Br. tit. Testament (c) 19. 4 E. 3. * Ass. 178. || 11 H. 7. 12. b. 29 † E. 3. 39. & Sir William (d) Harberts Case en le tierce pt des mes Reports, cases de equality ground sur reason & equity, Ipsæ (e) etenim Leges cupiunt ut jure regantur; & nient obstant q̃ les pols del commission, done authority al Commissioners a fait̃ solonq; lour discretions, uncore lour proceedings covient estre limit & bound ove le rule del ley & reason. Car (e) discretion est un science ou understanding a discern̄ inter faurity & verity, inter tort & droit, inter shadows & substance, inter equity & colourable glosses & pretences, & nemy a faire solonq; lour volunts & private affections; car come un dit, talis discretio discretionem confundit, Et Walmesly Justice teigne, & ne fuit deny p ascun, q̃ si le owner del terre fuit tenus per (f) prescription a repait̃ le bank del riṽ, q̃ uncore sur tiel commission agard, les Cõmissioners ne doieñt charge luy solement ove tout, mes doient taxe touts queux avoient tert̃ en danger; & a cest purpose les statutes fuer̃ fait, car (g) auterment poit estre q̃ tout le pais sert̃ surround, devant que un person tantsolement poit repairer le bank, & ceo appiert per le letter des statutes, pur q̃ Judgment fuit done pur le Plaintiff.

Cr Jac. 336. 10 Co. 139. a. 1 Rol. Rep. 32. 2 Bulstr. 199.

(b) 1 Co. 99. a. 5 Co. 24. b. 7 Co. 38. b. Co. Lit. 231. a. 2 Inst. 489. Cart. 142. 3 Keb. 592.

(c) 2 Co. 25. b. Br. N.C. 275. 2 Bulst. 15.

* 2 Co. 25. b.

|| 2 Co. 25. b. 3 Co. 13. a. 14. a. Co. Lit. 376. b. 386. b. Hob. 25. 3 Bulstr. 318. Cr. Jac. 218.

† 2 Co. 25. b.

(d) 3 Co. 13, 14.

(e) 10 Co. 138. a. 140. a. 4 Inst. 41 2 Bulstr. 197, 198. Callis Lect. 112. Hob. 158. Hardr. 146. Cr. Jac. 336. 3 Bulstr. 128.

(e) 2 Co. 25. b. 8 Co. 152. a. 9 Co. 123. b. Co. Lit. 10. a. 43. a. 166. b. 174. b. 271. b.

(f) 10 Co. 140. a. Callis Lect. 144.

(g) 10 Co. 140. b.

Trin. xl Eliz. Reg.

In Communi Banco.

Penruddock's Case.

Hill. 37 Eliz. Rot. 387. in Bank le Roy, in Brief de Error. Jenk. Cent. 260. 3 Inst. 201, 202, 203, &c. Cr. El.234. 9 Co.53.b.

EN quod permittat inter Henry Clark Pl', & Edward Penruddock & Mary sa feme Def. q̃ fuit adjudge en le Common Bank, & remove per brief de Error en Bank le Roy, Hill. 37 Eliz. Rot. 387. le case fuit tiel: John Cock 2 Octob. anno 1 Mariæ, levy sur son franktement demesne un mease in St. Johns Street in le County de Midd. cy pres le curtilage dun mease de Thomas Chicheley, q̃ domus illa superpendet, anglice, doth overhang, magnam partem, videlicet tres pedes curtilagii prædict', &c. & puis John Cock convey le mease q̃ il ad issint levy al Penruddock & sa feme; Et Tho. Chicheley, a q̃ le nusans fuit fait, convey son mease al dit Clark ore Pl'; Et le Pl' in son quod permittat (q̃ il port) prosternere domum prædict', counta, q̃ m̃ le mease superpendet tres pedes curtilagii prædict', sic quod aquæ pluviales de eadem domo descendentes, solum ejusdẽ curtilagii conterũt, ac magnopere, ac indies magis magisq; consumunt & devastant, ac ea ratione curtilag̃ prædict' quolibet pluviali tempore humectat̃ & inundat̃ existit, quod prædictus Henricus inhabitans in eodem messuagio, nullum profic̃ & easiamentum de eodem curtilagio percipere possit, ad nocumentum liberi tenementi prædicti in eisdem. Et le primer q̃stion fuit, si le brẽ de quod permittat gist en cest case p̃ le feoffee, ou nemy: Et fuit object, q̃ q̃nt tort & injury est fait p levier dun nusans, p̃ q̃ actiõ gist, si cẽy q̃ ad le frãktenemt, a q̃ le nusans fuit fait cõvey c̃ ouster, ore cest tort est remediles, come si le Sñr incroche rent de son tenãt, le tenãt ne poit avoider cest tort en (a) avowry, mes in assise, (b) ou cessavit, ou ne (c) injuste vexes, il poit. Mes si le teñ a q̃ le tort est fait, enfeoff un aut̃, s̃ feoffee ne unq̃s avoider cest

(a) 4 Co.11.b. 9 Co. 34,a. Doctrin. placit.318. 2 Inst. 21.
(b) 4 Co.11.b. 9 Co. 34.a. Doctrin. placit.318. 2 Inst. 21.
(c) F. N. B. 11. c.

cest tort : Car il p̄ndra la terre en m̄ le plight, cōe c̄ fuit done a luy; & c̄ appiert ꝑ 33 E.3. Avowry 255. & 18 E.2. Avowry 217. & 4 E.2. Avowry 201. Auxy si home soit seisie de terr̄ a q̄ common est appendāt, & est disseisie del cōmon, sur q̄ il port Assise, & puis il infeoff un aur̄ del dit terr̄, le cōmon est extinct a touts jours : & ove c̄ accord, 4 E. 3. ꝑ q̄ semble al eux q̄ le feoffée navēr le dit qd' permittat davoider le tort, & nusās fait in le tēps de s̄ feoffor. Mes fuit rn̄de & resolve, q̄ le distilling del ewe in tēps del feoffée, est novel tort, issint q̄ le ꝑmission del tort ꝑ le feoffor, ou s̄ feoffée a continuer al p̄judice dun aur̄, serra puny ꝑ le feoffée del mease, a q̄, &c. & si c̄ ne serr̄ reform ap̄s le req̄st fait, le qd' permittat gist ṽs le (a) feoffée, & il recovra damages, sil ne reform c̄, mes sans request fait, ne gist ṽs le feoffée, mes ṽs cestuy q̄ fait le tort c̄ gist sans ascū req̄st : Car le ley ne require ascū (b) req̄st destr̄ fait a luy q̄ fist le tort luy m̄, & issint cest case niēt semble a ascū des cases, q̄ux ount estr̄ mise del aur̄ ꝑt. Vide 4 lib. Ass. pl. 3. 4 (c) E.3. 36. a. b. 5 E.3. 43. ou appiert q̄ le feoffée avēr qd' permittat dun nusans levy en le tēps le feoffor. Et ove cest Judgm̄t accord un Judgm̄t done ꝑ Sir Chr. Wray Chief Justice, & tout le Court del Bank le Roy, Mich. 24 & 25 El. ou le case fuit : John (d) Rolf le pier fuit seisie dun mease en Hemelhumstead en fée, & Rich. Rolf le pier fuit auxy seisie dun peece de terr̄ del South & East ꝑts adjacent al dit meason, & Rich. Rolf edifie un mease sur s̄ piece de terr̄ avāt-dit cy pres le mease le dit J. Rolf, q̄ le eaves & barges del dit mease suppendēr ꝑt del mease del dit J. Rolf, issint q̄ le rain q̄ discend del dit mease del dit Rich. Rolf, chia sur ꝑt del mease le dit J. Rolf; & puis J. Rolf morust, & son meason discend a son fits, & puis le dit Richard morust, & son terre discend a son fits; quel sur request fait ꝑ le dit John, le fits ne reform le dit tort, mes permit les eaves & barges de son mease a suꝑpender le meason del J. Rolf le fits, per certain temps, le mure del meason del dit J. Rolf le fits devenēr putrid, &c. sur quel matr̄, John le fits port action sur le case ṽs Richard le fits sur q̄ Richard le fits demurr̄ in ley. Et fuit adjudge q̄ laction fuit (e) maintenable, pur ceo q̄ le Def. sur request fait, ne reform le nusans q̄ son pier fist, mes permit c̄ a continuer al prejudice & damage del Pl' fits & heir a cestuy, a q̄ le tort est fait. Vide 2 H. 4. 13. 31 E. 1. tit. Voucher 272. 20 Ass. pl. 18. 19 Ass. pl. 6. & ove cest Judgm̄t en le principal case accord le Register fol. 199. b. & Fitz. Nat. Br. f. 124. h. Et lestatute de W. 2. cap. (f) 24. ꝑ q̄ est purvieu, Quod si transferat domus,

murus

(a) Jenk. Cent. 260. Raym. 424, 469. 2 Bulst. 16. 2 Inst. 405. 3 Inst. 204. Cr. Jac. 231, 373. Cr. El. 191. Moor 353. F.N.B. 124. h.
(b) Cr. El. 269.
(c) 2 Bulstr. 16. 9 Co. 54. a.
(d) Rolfs Case, 24 & 25 Eliz. Cr. Eliz. 402. Moor 353.
(e) Moor 118, 353. Cr. El. 191, 402. Cr. Jac. 231.
(f) 9 Co. 55. a. 2 Inst. 405, &c. Co. Lit. 54. b.

murus, &c. in aliam personam, breve non deneget, sed de cætero, cum in uno casu, concedit bre in consimili remedio, remedio indigente, sicut prius, fiat bre; Et si hujusmodi levata ad nocumentum, transferant in aliam personam, de cætero fiat bre: Per q appiert, q bre in nre case gist bien, & issint fuit adjudge in le Common Bank, q le quod permittat in le case al barre bien gist. Vide 14 Eliz. Dyer (a) 319. Madam Browns Case. Et Hill. 35 Eliz. Rot. 493. inter (b) Beswick & Cumden in Bank le Roy. Sur quel Judgment in le case al barre, Penruddock & sa feme port bre de Error in Bank le Roy, ou Popham Chief Justice & touts les Justices del Bank le Roy, cõcurre in opinion ove les Justices del Common Bank, qnt al point adjudge la. Et fuit move in Bank le Roy, si le feoffee poet abater un nusans, come le feoffor m, & cibien in le mains del feoffee, q ne fist le nusans, cõe in mains del tortfesor m: Et si le feoffee del mease a q le nusans fuit fait, poet ceo faire (sil poet faire ceo) devant q il ad ascun special prejudice, come in distilling del ewe, ou sil doit targe, tanq il ad special prejudice: Et Popham Chief Justice tient, que in ambideux cases le feoffee poet (c) abate le nusans, & ceo devant ascun prejudice; car est reason q il preventera son prejudice, & nemy a targer tanq ceo fuit fait, quod fuit concessum per totam Curiam. Et puis Judgmt fuit affirm. Et issint cest case fuit adjudge per touts les Justices d'Engliterre.

(a) Cr. El. 251, 402. 2 Leon. 103. Dyer 319, 320. pl. 17. Yelv. 144. Noy 112.

(b) Moor 353, 449, 450. Cr. El. 402, 403. Noy 68.

(c) 9 Co. 55.a. Cr. El. 269. 1 Rol. Rep. 394. 3 Bulst. 197. 1 Jones 222. 2 Rol. 144, 145, 565. Cr. Jac. 555. 9 E. 4. 35. b. Cr. Car. 185. Jenk. Cent. 260.

Pasch,

Pasch. xli Eliz.

Rot. 513.

Windsor's Case.

EN Quare Impedit, p A. Windsor vs Arch. de Canterb. Flecher, &c. pur Lesglise de Buscot, in Common Bank. Et le Pl' count q le Pl' ad Manor, a q le advowson de deux parts del Esglise fuit append, & q le Def. ad un Manor, a q le advowson del tierce pt fuit append: Et sur le count, & le barre, le case fuit tiel. Le Pl' ad ladvowson de 2 parts, & le Def. le 3. Le Pl' present un foits, & lencumbent morust, & puis il present in temps E. 6. Parry, q fuit admit, institute & induct; Et puis in temps le Roigne Mary il fuit deprive, p c q il fuit conjugatus, and a Favourer of the Religion tempore E. 6. & l'Esglise esteant void p son deprivation, le Def. present son Clark, q fuit admit, institute & induct, & remansit in Ecclesiam usque primo Eliz. & donques deprive p Jewel, & auters les hault Commissioners, & le prish sentence de deprivation declare & adjudge destre void, & Parry le prish Incumbent restored al dit Esglise: Et puis le Clark del Def. issint deprive morust, & puis Parry morust, & le Def. present come in son turn, entant q son Incumbent fuit deprive; & Parry le Incumbent del Pl' restore, p q mort, l'Esglise devient ore void. Sur q le Pl' demurre in ley. Et fuit adjudge encount le Pl'. Et in cest case fuit agree, si 2 ount title a present p turne, & lun present, q est admit, institute, &c. & puis deprive p crime, ou heresie, ou ascun auter cause, unc il ne psentet arere, mes c servet pur son (a) turn, issint si il psent mere laicus, q fuit admit, institute, &c. comt q il soit declare p sentece, q il fuit incapable, & p c void ab initio, uncore p c q l'Esglise fuit plein, tanq le Sentence declaratory veign, a cest cause, comt q cest deprivation relate a ascun purposes, uncore c servet p son turn, p c q c fuit q voidable, come in le case de Litt. si le (c) Seignior marry son gard deins age de cosent, & puis il disagree a c, ore est nul marriage ab initio, unc il

Co.Ent. 485. pl.6. Moor 558, 559. 2 Rol. 347. Cr.El. 686, 687. 10 Co. 136.b. 2 Rol.Rep. 131. Lit.Rep.304.

(a) 2 Rol.347. Cr. El. 687, 811. Hob. 167.

(b) 2 Rol. 347. Hob. 148, 149.

(c) Co. Lit. 79. b. Lit. Sect. 105.

(a) Co. Lit. 79. b. Co. Lit. Sect. 105.

Vide 23 Eliz. Dyer pl. ultimo.

(b) 2 Rol. Rep. 3. 2 Rol. 347. 6 Co. 29. a. 2 Jones 19. Cr. El. 680. 1 Anders. 62, 63. Yelv. 7. Cawley 22.

(c) Dyer 377. pl. 31. 2 Anders. 183. Hob. 168. Cr. El. 680.

(c) 2 Rol. 347. Cr. El. 687.

(d) Doctrin. placit. 95, 385. 10 Co. 135, 136. Co. Lit. 17. b. 18. a.

(e) Dyer 78. pl. 34. 4 Co. 75. a. b. 10 Co. 136. b.

(f) F.N.B. 33. a.

il ne (a) marry luy apres: Issint 27 H. 6. tit. Gard 118. si le gardein marry son garde, & puis ils sont divorce causa præcontract', uncore il navera le marriage de luy arere. Mes q̃nt l'admission & institution sont meremt void, donques sans question ceo ne servera pur un turn, come si son presentee ust estre admit, institut & induct, mes il nad subscribe a les (b) articles, &c. solonq; lestatute de 13 Eliz. p q̃ in tiel case ladmission & institution & induction sont void; 23 Eliz. (c) Dyer pl. ultimo acc. Mes in le principal case, coment q̃ le Clerk del Def. fuit parson pur le temps, a touts purposes, & durant le prim deprivation Parry ne fuit incumbent, uncore q̃nt le second sentence vient, ore Parry fuit incumbent arere p force de son prim presentation, institution & induction, & ne besoign novel institution, &c. & p force del second sentẽce le presentee del Def. fuit remove, & Parry restore; donques q̃nt Parry morust, que fuit le darrein presentee del Pl', le Def. presentera come en son turn, car le presentation q̃ il fist, ore le sur matter, durant le vie de Parry esteant le second presentee del Pl', ne poit estre in son turn, q̃nt Parry devy incũbent per force del presentation del Pl'. Mes si Parry ust devy (c) devant le second sentence, ou nad reverse le prim sentence, donques le Def. ust ewe son turn; Et nota, que le brẽ fuit ad (d) Ecclesiam, & le count fuit de advocatioñ duarum partium, & bene. Vide Dyer 6 E. 6. (e) 78. b. Fitzh. Nat. Br. 39. b. Vide Trin. 14 Eliz. Rot. 1060. in Communi Banco, & Hill. 38 Eliz. Sir Thomas Stanhops Case in Communi Banco. Et semble a moy q̃ le brief covient estre (f) general, come Fitz. Nat. Br. & divers auters livres sont, mes le count covient estre accordant a son title.

Trin.

Trin. xliii Eliz. Reg.

Rot. 1804. In Communi Banco.

Hungate's Case.

HUngate (a) port Action de Debt sur obligation vers Mese & Smith, le condition de quel fuit, a performer larbitrement deux, inter le Plaintiff dun part, & des Defendants dauter. part, Ita quod arbitrium prædict' fiat & deliberetur utrique partium prædictorum, devant tiel jour: Et les Defendants plede que devant le jour larbitrement fuit fait, mes fuit deliver al Plaintiff, & Mese un des Defendants, & nemy al dit Smith. Sur q̄ le Plaintiff demurre; & Judgmt fuit done encounter le Plaintiff. Et fuit resolve, q̄ ascun foits cest parol (uterq;) est discretive & sever, & ascun foits collective & conjoin: Come si deux ou trois sont lie en un obligation, & (b) utrumque eorum, cest parol (utrumque) fait lobligation several, come est tenus, Dyer 28 H. (c) 8. 19. b. Mes en le case al barr̄ c̄ serra prise collective. Et le rule a scaver in quel sense il serra prise, & quant il serra prise ou (d) severalmt, ou * joyntmt, est a consider le subject matter, & a faire construction solonq; le congruity de reason, & ut evitetur absurdum, come en le case de (e) 39 H. 6. 7. Le condition dun obligation fuit, si uterq; eorum, s. le obligor & obligee, steterit arbitrio Robert Bozom, &c. Et fuit adjudge, q̄ chescun de eux fuer̄ lie pro parte sua, & nemy lun pur lauter; Car ceo serra absurde, & encounter le congruity de reason. Et en le case al barre, entant que chescun des parties est subject al penalty & danger, est reason que larbitrement serra deliver al

(a) Moor 642. Cr. El. 885. 2 Rol. Rep. 87. Bridg. 63, 64. March Arbitrement 182, 183.

(b) 2 Rol. 148. 2 Bulstr. 70. Cr. Jac. 322.

(c) Dyer 19. pl. 114. 2 Bulstr. 70.

(d) Cr. El. 797. * Moor 260.

(e) Bridg. 63, 64. 39 H. 6. 11. a. 10. b.

al chescun des parties, al entent que ils poient performer ceo, & avoid le danger del infreinder de ceo. ¶ 2. Fuit resolve, que si deux sont dun party, & deux dauter party, & les parols sont (ut supra) ita quod deliberetur utrique partium, que le delivery del arbitrement al un del un party, & al auter del auter party, nest sufficient. Car party est destre intende del entier party, & lun est cibien deins le penalty & danger, come lauter. Et intant que le arbitrement ne fuit deliver al dit Smith, Judgment fuit done encount le Plaintiff.

Trin. xlii Eliz. Reg.

In Bank le Roy.

Baker's Case.

SUR Evidence en Ejectione firmæ, enter (a) Middleton & Baker, fuit resolve per totam Curiam, que si le Plaintiff en evidence (b) monstre ascun matter en escript, ou de record, ou ascun sentence en le Ecclesiastical Court, sur q̃ question en ley surde, & le Defendant offer a demurrer en ley sur ceo; Le Plaintiff ne poit refuser a joynder en demurrer, (c) mes il covient joinder en demurrer, ou waive son evidence. Issint si le Plaintiff p̱duce (d) testimoignes a prover ascun matter en fact, sur que question en ley surde, si le Def. admit lour testimoigne destre voier, la auxi le Def. poit demur en ley sur c̃; mes donq̃s il doit admitter levidence done pur le Plaintiff destre voier; Et le reason de ceo est, q̃ matter en ley ne ser̃ mise in le bouch de layes gents. Issint poit le Pl'. demur sur levidence del Def. mutatis mutandis. Mes si evidence soit done pur le (e) Roign in enformation, ou ascun auter sute, & le Def. offer a demurrer sur ceo, le counsel le Roign ne ser̃ arct a joyner in demurrer. Mes in tiel case le dit (f) Court poit direct le Jury a troṽ lespecial mat̃, & sur c̃ ils adjudger̃ le ley, come appiert 34 H.8. (g) Dyer 53. Mes c̃est p̱ le prerogative (h) le Roy, que auxy poit waiver (i) demurrer, & prender issue a son pleasure, Nota bene.

(a) Cr.El.751,752.
(b) Co. Lit. 72. a. Doct. placit. 118.
(c) Co. Lit. 72. a. 2 Rol. Rep. 119. Doct. placit. 118.
(d) Doct. placit. 118.
(e) Cr.El.752. Co. Lit. 72. a. Doct. placit. 119.
(f) Cr. El. 752. Doct. placit. 119. Co. Lit. 72. a.
(g) Cr. El. 752. Co.Lit.72.a. Dyer 53. pl. 8.
(h) Mod.Rep.280.
(i) Hard. 83. Plowd.85a. 236.a.

Mich. xxxix & xl Eliz.

In Communi Banco.

Boulston's Case.

(a) Cr. El. 547, 548. Moor 420, 421, 453. 1 Rol. 90, 405. 1 Jones 356. Yelv. 104. 2 Leon. 201. 4 Leon. 7. Godb. 122, 123. Owen 114. 2 Bulst. 115, 116.
(b) 1 Rol. 90. 4 Leon 7. Cr. El. 548. Cr. Car. 388.
(c) 4 Inst. 305.
(d) Moor 238, 421, 453. Cr. El. 548. 2 Rol. 138, 139, 265. Cr. Jac. 382, 491. Godb. 259. 1 Rol. Rep. 136, 200, 201. 2 Rol. Rep. 3, 4, 5, 30, 31, 32. Poph. 141.
(e) Cr. Car. 388. Devant 73. a.

INter Boulston & Hardie, fuit adjudge in le Cómon Bank, q̃ si home fait (a) Conyborrows in son terr̃ demesn, q̃ux increase a cy grand nombr̃, q̃ ils destroy la terre de son vicine ꝓchein adjoinãt, q̃ son vicine ne poit aṽ action sur son case vers cestuy q̃ fait les dits Conyborrows; Car maintenant cõe les Conies vient in le terre del vicine, il poit (b) eux occider car ils sont *feræ naturæ*, & cestuy que fist le Conyborrows nad ascun property (c) in eux, & il ne serra punie pur le damage, que le Conies fesoient in queux il nad ascun propertie, & queux lauter poit loyalment occider: Et fuit resolve in cest case, que nul poit novelment, erecter un (d) Dovecote, mes le Seignior dun mãnor, & si ascun ceo fist, il poit estre punie in le Leet, mes nul action sur le case gist per ascun particuler home, pur (e) le infinitnes des actions q̃ purr̃ estre port. Et de tiel opinion, quant al novel erection dun Dovecote, fuit Sir Roger Manwood Chief Baron, & les Barons, del Exchequer in le Exchequer Chambre.

Hill.

Hill. xliii Eliz. Reg.

Rot. 1807. In Communi Banco.

Alden's Case.

EN Ejectione firmæ per Smith vers Alden, (a) le Def. plead que les tenements en queux, &c. fueront parcel del Manour de Odiham in Comitat Southampt, &c. quod quidem manerium est de antiquo dominic, &c. & demand judgment, si cest Court voile conust; sur que le Pl demur in ley. Et fuit object, que cest action ne fuit forsq; in nature de Trespas, & que in ancient temps, in ceo le term ne fuit recover, mes solement vers cestuy in le reversion: Et in (b) trespass de close debruse & arbres coupes, ancient demesne nest plea, come est adjudge en 46 E. 3. 1. b. Aux terres en ancient demesn serra (c) extend per elegit, pur ceo que franktenement remain come fuit devant, & uncore le interest del terre est charge per cest execution, 7 H. 7. 1. Mes fuit respond & resolve, que le plea fuit bon, 1. pur ceo que le common intendment est, que le title & droit del terr veigne in ceo in debate, come in repl, in brief de (e) mesne, in brief de (f) gard, in account (g) vers gardein in socage, ancient demesne est bon plea pur le apparance, & common intendment que le realty viend in debate 21 E. 3. 10. 40 E. 3. 4. 46 E. 3. 1. Issint in account vers Baille, car ceo est port pur lissues & profits del terre, que est ancient demesne, que doit estre determine in le Court dauncient demesn. Vide 21 E. 4. tit. Auncient demesne 6. 2. En cest action de Ejectione firmæ, le Plaintiff recovera le possession del terre, & avera execution auxi per habere facias possessionem, & nient semble al execution per elegit. Car la nul judgment

(a) 2 Anders. 178. Cr. El. 826.
(b) Cr. El. 826. Hob. 47. 1 Rol. 322. Doct. placit. 52. Br. ancient demesn 7. 4 Inst. 270.
(c) Hob. 47, 48. Dyer 373. pl. 13. Doct. placit. 51. 2 Inst. 397. 4 Inst. 270. Palm. 541. Br. ancient demesn 33. 22 Ass. pl. 45. Apres 105. b. 1 Ro. 888.
* 2 Anders. 178. Cr. El. 826. Cr. Jac. 559. Hob. 47. 9 Co. 77. b. Doct. placit. 51. Latch 83, 84. 2 Brownl. 129, 130, 133. 2 Rol. Rep. 181. Cr. Car. 9. Palm. 406. 1 Bulst. 108. 4 Inst. 270.
(d) Cr. El. 826. Hob. 47. 1 Rol. 322. 1 Bulst. 108. 46 E. 3. 1. b. 2. a. Br. ancient demesn 7. 4 Bnst. 270.
(e) 1 Rol. 322. 4 Inst. 270.
(f) Hob. 47. 1 Rol. 322. 46 E. 3. 2. a. Br. ancient demesn 7.
(g) Hob. 47. 2 Brownl. 131. 1 Rol. 322. 46 E. 3. 2. a. 4 Inst. 270.

ment est done a recover le possession del terr in Court de record, mes solement execution fait per le Visc en pais; Mes in Assise port per tenant per elegit, (a) ancient demesn est bon plea, come tenetur 22 Ass. pl. 45. & la ascuns diont, que terre in ancient demesn nest subject al elegit, mes le contrary est a cest jour tenus pur ley pur le reason avantdit. Et ou ascun interest en le terre serr lye, ou que le realty viendr in debate, serra reasonable que ceux de ancient demesn que meileux scavoient a tryer eux, & determiner, averont ent conusans. Et si cest action proceed in cest court, le viscount ne poit returner ascun person deins ancient demesn, & sil return ascuns, il poit estre challenge & treit, & per ceo le voyer institution de ley serra defeat. S. Que le interest de chescun terr serr trie per probos & legales homines de vicinet, &c. que meileux scavoient le verity del matter: Et intant que a ceux jours, touts titles de terr sont pur le greinder part trie in actions de Ejectione firmæ, si en eux ancient demesn ne serr bon plea, les ancient privileges, (quux le ley, pur le repose & quiet de ceux dancient demesn allow a eux, al intent que ils appliet eux mm a tillage & husbandry, & pur ceo sont cy grandment regard & favour in nre livres) serr oustermt tolle & defeat. Vide 44 E. 3. 22.

(a) Hob. 47, 48. Devant 105. a. Dyer 373. pl. 13. Doct. placit. 51. 2 Inst. 397. 4 Inst. 270. Palm. 541. Br. ancient Demesn 33. 1 Rol. 888.

Cr. El. 104.

Paschæ

Pasch. xliii Eliz.

In Bank le Roy.

Sir Henry Constable's Case.

SIR Henry Constable port Action de Trns vers Gamble, & count que le Roy & Roign Phil. & Mary fuer seisie del Manor & Fee de Holderness in Com Eborum, in lour demesn come de fee, come en droit del Corone Dengliterre, & per lour Letters Patents, grant le dit Manor & Fee ove wreck de mere deins le dit Manor & fee, al Henry Countee de Westmorland in fee, que convey eux a Sir John Constable pier le Pl' que heir il est, in fee; & count ouster, q certein biens, s. 12 shirts, & 5 clokes fuer wreck, & eject sur le terre deins le Manor de Barneston, que est deins le dit fee de Holderness, & que le Def. prist les dit biens, &c. Le Def. plede al issue & sur ceo un special verdict fuit trove a cest effect, s. q le conveyance al Pl' del Manor & fee avantdit, fuit voire come il ad count, & que le dit Manor de Barneston fuit deins le dit fee; & ouster, q parcel des biens avantdits fuer wreck, & eject sup arenas aqua salsa minime coopertas Manerii de Barneston, infra fluxum & refluxum maris in manerio de Barneston: Et pur auter pcel des biens, que ils fuer floting super aquas maris refluētes ex arenis ejusdem manerii de Barneston, infra fluxum & refluxum maris, &c. Et que le Def. prist touts les dits biens, & eux seisiest al oeps del Seignior Admiral, &c. Et assess damages entierment p touts: Et si super totā materiā, &c. Et cest case fuit sovent foits bien debate al Bar & al Bench, & al darren judgment fuit done encounter le Pl'. Et in cest case 5 points fuer resolve, ¶ 1. Que riens sera dit wreccum (a) maris, mes tiels biens solement que sont ject ou relict sur le terr p le mere, car wreccum maris significat illa bona, quæ naufragio ad terrā appellunt. (b) Flotzā est, quant

1 Andersf. 86, 87.

Wreccum maris. (a) 2 Inst. 167. Flotzam. Jetsam. (b) Dalt. Sher. 90.

q̃nt un nief est submerge, ou autermt pish & les biẽs float sur le mere. Jetsam est q̃nt la nief est in pil deẽ mrge, & pur disburden le nief, les biens sont jects in le mere, & puis nient obstãt le nief pish. Lagã (vel potius ligã) est q̃nt les biẽs q̃ issint sont jects in mere, & puis le nief pish, & tiels biẽs issint jects sont cy ponderous q̃ ils sink al bottõ, & les marynñs al intent de eux reaver, lye a eux un boy, ou cork, ou auť tiel chose, q̃ ne voet sink, issint q̃ ils poiẽt trov eux arrere, & diciť Ligan a ligando, & nul de ceux biens que sont apell' jetsam, flotsam, ou lagan, sont appell' wreck, cy longe come ils remain, in, ou sur le mere, mes si asc̃ de eux sont mise al terr p le mere, donq̃s ils serr dit wreck: issint flotsam, jetsam, ou lagan, esteant ject sur la terr, passe p le grant de wreck. Et ou est pvieu p le statute de 15 R.2. c.3. q̃ le Court Admiral navera cognizance ou jurisdictiõ de wreck de mere uncor il avera conusans & jurisdictiõ de flotsam, jetsã, & lagan, car wreck de mere est q̃nt les biẽs sõt p le mere ject sur le terr, & issint infra comitať, dont le commõ ley prist conusans; mes lauters trois sõt tout sur le mere, & p̃ c̃ de eux le Admiral ad jurisdictiõ, Bract. lib.3. c.3. f. 120. Item magis proprie dici poterit wreccũ, si navis frãgať, & ex qua nullus vivus evasit, & maxime, si dominus rerũ subversus fuerit, & quicquid inde ad terrã (nota ceux pols) venerit, erit dñi Regis. Et c̃ auxy appiert p le livre de Entres f.611, 612. tit. Trñs in wreck. Touts foits q̃nt wreck est claim p pscripť (cõe p ley c̃ poit estr̃) le pleading est, bona wreccata sup mare, & ad terr pject': Et auť pscriptiõ est, Ibid' habere omnod' wreccũ maris infra pcinct' mañii, sive domii pd' pject', & flotsã maris infra eundẽ pcinct' devenienť: p q̃ le difference inť wreck & flotsã appiert. Vide 9 E.4.22. wreck est q̃nt c̃ est ject sur le terre, 11 H. 4. 16. 5 E. 3. f.3. & 29. 21 H.6. tit. Prescription. 14 E. 2. in trñs 236. 5 H.7. 36. 35 H.6. 37. & 9 H.7.20. accord'. Vide register inť bria de transgress. f. 102. b. le bře dit ostẽsuť quare cũ idẽ Tho. dominus mañii de Estombavent existat, & ibid' habere debeat ipseq; & antecessores sui, dñi mañii pd' a tẽpoř quo &c. non extat memoria, hucusq; habere cõsueverũt wreccũ maris infra pcinct' mañii pd', pdict' Jocens & Robertus, bona & catall' ad valẽc cenť solid' apud S. infra pcinct' ejusd' mañii, ad terrã project', & quæ ad ipsũ Tho. tamq; wreccũ ptinere deberẽt, vi & armis ceperũt & asportaverũt. Auxi le statuť de 15 R.2.c.3. pve c̃ auxi, ou est enact & declare, q̃ wreck de mere serr try & determine p les leys del terre, q̃ ne poit estr̃ extend al flotsã, jetsã, ou lagan, car ils sont in, ou sur le mere, & p̃ c̃ ne poiẽt eẽ trye & determine p le cõmon ley, car fault trial, mes sont destr̃ determine devant

Dalt. Sher. 90. Spelm. Gloss. verbo flotsan.

Dalt. Sher. 90. 1 Sid. 178. Palm. 96.

4 Inst. 154. F.N.B. 112. C. Doct. & Stud. 156, 157.

F. N. B. 91. d.

devant ladmiral. ¶ 2. In cest case fuit resolve, ꝑ totã Cur̃, q̃ le soil sur q̃ le mere flow & reflow, s̃ inter le highwater m̃ke, & le lowwater m̃ke, poit eẽ ꝑcel dun Manor (a) dũ subject. 16 Eliz. Dyer 326. b. acc̃. Et issint fuit adjudge in (b) Lacies Case, Triñ 25 El. in cest court. Et uncor̃ fuit resolve, q̃nt le mere flow, & ad plenitudinẽ maris, ladmiral aṽa jurisdictiõ de chesc̃ chose fait sur le ewe, int̃ le highwat̃ m̃ke & lowwat̃ m̃ke, ꝑ le ordinary & natural course del mere: Et issint fuit adjudge in le dit case de Lacy, q̃ le felony fait sur le mere ad plenitud' maris int̃ le highwat̃ m̃ke & le lowwat̃ m̃ke, ꝑ le ordinary & natural course del mere, ladmiral aṽa jurisdiction, & uncor̃ q̃nt le mere est reflow, le terr̃ poit appertein al subject, & chescũ chose fait sur le terr̃ q̃nt le terr̃ est reflow, serr̃ try al cõmon ley, car c̃ donq̃s est parcel del county, & infra corpus comitat̃, & ove c̃ agrée 8 E.4. 19. a. Issint nota desouth le lowwat̃ m̃ke, le admiral ad le sole & absolute jurisdictiõ, & inter le highwat̃ m̃ke & le low-wat̃ m̃ke, le cõmon ley & le admiralty aviont divisim imperiũ, int̃changeablem̃t cõe est avantdit, s. lun suꝑ aquã, & laut̃ suꝑ terrã. Et Sir John Popham Chief Justice dit, q̃ in trial dũ Nisi prius int̃ le City de Bristol, & le Sñr Barkley, fuit tenus ꝑ les Justices dassise, q̃ ou le Sñr Barkley avoit un Manor adjoinãt al Severn, & ꝓscribe daṽ wreck deins son Manor, & certein biens flote deins le highwater mark & lowwater mark, & le City de Bristol ad flotsam la; Et tenus q̃ les dits biẽs ne fuer̃ wreck, cy longe, come ils fuer̃ floating sur le ewe inter le highwater & lowwater mark. Vid. le livre en (c) 5 E.3. f. 3. a. in rep̃l. port ꝑ Williã de Newport de Londres, ṽs Sir Henry Nevil, & count q̃ le Def. prist 3 lasts de Herrings, & un nief: le Def. plede, q̃ il fuit Sñior del Manor de Walring, & ꝓscribe daṽ wreck deins son Manor, de tẽps dont, &c. & le Herring & nief fuer̃ wreck deins son Manor: a q̃ le Pl' dit q̃ ils fuer̃ nous chateux in le gard nous mariñs q̃ arivẽt ꝑ mere, & diomus q̃ hors de lour gard ils eux prist, judgm̃t sil poit claim̃ cõe wreck: A q̃ le Def. dit nous pristomus come wreck hors de chescun gard. Sur q̃l livre, jeo observe trois choses, 1, q̃ wreck poit eẽ claim ꝑ ꝓscriptiõ. 2, q̃ intant q̃ un nief ne poit eẽ wreck, s. ject sur le terr̃, mes int̃ le highwat̃ & le lowwat̃ m̃ke, de c̃ insuit q̃ c̃ fuit ꝑcel del Manor, 3, si le nief ꝑish, uncor̃ si asc̃ des servants escape, le ley dit, q̃ ils ount se custody des biẽs, & ne sont wreck, 39 E. 3. 35. a. b. un (e) prescribe daver roial pisson, cõe porpes, &c. trove deins son hundred, q̃ sẽble dest̃ deins le highwat̃ & lowwat̃ m̃ke. ¶ 3. Fuit resolve q̃ le Roy aṽa flotsã, jetsam, & lagan, q̃nt le nief ꝑish, ou q̃nt le owner des biens

ne

Terra inter fluxum & refluxum maris.

(a) 2 Rol. 170.

(b) 3 Inst. 48. 113. 2 Co. 93. a. 13 Co. 53. 1 Leon. 270. Moor 121, 122. 1 Rol. Rep. 139. 1 Bulst. 203. Dalt. Just. 340. 2 Brownl. 34.

(c) Fitz. Replevin 41. 2 Inst. 167.

(d) 3 Bulst. 5, 6. Co. Lit. 114. b.

ne soit conus, car in 46 E. 3. 15. appiert q̃ biẽs jecť in mere pur doubt dun tẽpest ne sõt forfeit. Vid. F. N. B. 112. c. 5 E. 3. 33. 9 E. 4. 22. q̃ le nief coviẽt pish, q̃ est appell' shipwreck, & ceo est auxi ꝑve ꝑ le dit act de W. 1. c. 4. (a) ou est dit, si hõe, chien, ou chate, escape vives (q̃ est deẽ intẽd q̃nt le nief pish) & ove ceo accord Bract. lib. 2. c. 18. f. 41. Item sine traditione res habita ꝑ direlict' ubi dñs statim desinit esse dñs, si autẽ causa navis alleviandæ, non sic, quia non ea voluntate ejecit quis, ut desinat esse dñs, &c. Et hõe poit aṽ flotsã & jetsã ꝑ grant le Roy, & poit aṽ flotsã deins le high-wať & lowwať mke ꝑ ꝑscriptiõ, cõe appiert devãt. Et ceux del West Country ꝑscribe daṽ wreck in le mere cy far cõe ils poient voier un humber barrel. ¶ 4. Fuit resolve, que lestatute de W. 1. c. 4. ꝑ q̃ est ꝑvieu, q̃ de wreck de mere est accord, q̃ si ou hõe, chien, ou chate, escape vives hors de la nief, ou battel, ou nul rien q̃ la eins fuit, ne soiẽt adjudge wreck, mes soiẽt les choses saves & gardes ꝑ le vieu del vic, corofi, ou del Bailif le Roy, &c. issint q̃ si ascun sue ꝑ les biens, & puit ꝑver q̃ ils soiẽt ou a son Sñior, ou in sa gard pish deins lan & le jour sans delay, luy soiẽt rendus: Ne fuit forsq; declaratiõ del comon ley, & ꝑ ceo tout ceo q̃ est ꝑvieu q̃nt al wreck, extẽd auxy al flotsã, jetsã & lagan, Brac. q̃ escry in temps H. 3. devãt le fesãce del dit act plant de wreck devant, dit, Et qd' hujusmodi dici debet wreccũ, verũ est, nisi sit, qd' verus dñs aliunde veniens, & certa judicia & signa donaverit, res esse suas, ut si canis vivus inveniať, & constare poterit, quod talis sit dñs illius canis præsumptive, ex hoc illum esse dñm illius canis & illarum rerum: eodem modo si certa signa imposita fueř mcibus; Per q̃ appiert q̃ lestatute de W. 1. q̃ fuit fait 3 E. 1. ne fuit forsq; declaration del (b) common ley, incounť lopinion de Doct. & Stud. lib. 2. f. 118. & si le owñ morust ses executors ou administrators poient faiť lour proofs. Et in mults cases concñãt tẽps, le cõmon ley done an & jour ꝑ un conveniẽt tẽps, cõe in case de stray, si le owñ (ꝑclamations esteant faits) ne claim ceo deins an & jour, ceo est forfeit. Issint an & jour est dõe in case de appeal, in case de descẽt aꝑs entrie ou claim, de nonclaim sur fine ou bře de droit al common ley, de villein demurř (c) in anciẽt demesne, de mort de hõe q̃ ad plague ou wouñd, de protectiõs, essoin de service de Roy, & in mults auťs cases. Et lan & jour in case de wreck, serř (d) accoũt del prisel ou seasure de eux cõe wreck, car comt q̃ le ꝑpty est in ley vest in le Sñior devãt seisure, uncore tanq; le Sñr seisist & prist ceo in son actuel possession, ceo nest notorious, que claim le wreck, ne a que le owñ resorteř a fair son claim, & a mře a luy ses proofs. Et si le

(a) 2 Inst. 166, 167. Dalt. Sher. 89. Vaugh. 168.

(b) 2 Inst. 166, 168. Dalt. Sher. 91. Dr. & Stud. lib. 2. cap. 51.

(c) Co. Lit. 254.

(d) 2 Inst. 168. Dalt. Sher. 91. Vaugh. 168.

wreck

wreck appẽt al Roy, le pty poit aver cõmiſſion (a) de oier & t̃min̄ le verity de c̃, & c̃ p le verdict de 12 pbes hões; car nul (b) pof eſt allowable p ley mes le verdict de 12 homes, & ſi c̃ appent al aut̃ q̃ al Roy, donq̃s ſi le own̄ ne poit ſatisfier ceſty q̃ eux claim cõe wreck, p ſõ m̃k ou cocket, ou p le livre del cuſtõs, ou p teſtimoigne de pbes hões, donq̃s le own̄ poit aver tiel cõmiſſion, ou poit port̃ ſon actiõ al cõmon ley, & pve c̃ p verdict dun Jury, & ſi le cõmiſſion ſoit agard, ou le action ſoit commence deins lan & jour, coment q̃ le verdict ſoit done p̃ luy ap̃s, ſuffiſt. Vide Regiſter, & Fitz. Nat. Bre. f. 112. pur le cõmiſſion vide leſtatutes de W.1. c.4. 4 E.1. de officio coronat̃. 15 R.2. c.3. 27 E. 3. c. 13. & Britõ c.17, 33. Stanf. prerogat̃ Regis. Et nota, q̃ le act de (c) p̃rogat̃ Regis fait in 17 E.2. c.11. purvieu q̃ Rex habebit wreccũ maris p totũ regnũ, &c. neſt q̃ declaratiõ & affirmãce del cõmon ley, car niẽt obſtant ceſt ſtatute eſteant fait deins tẽps de memory, hõe poit p̃ſcribe d'aver wreck cõe appiert in 11 H.4.16. Stamf 38. N.B. 91. d. 5 H.7. 36. 5 E.3.3. & 59. 9 E.4.12. &c. ¶ 5. Fuit reſolve in le caſe al bar, q̃ pt des biẽs paſſe p le noſme de wreck, & part des biẽs fuer̃ flotſam, & ne paſſe p le grant de wreck, & damages fuer̃ entierm̃t aſſeſs pur touts; Et in tr̃ns le Pl' recovera damages ſolem̃t p̃ le value des biẽs, a ceſt cauſe judgm̃t fuit done vers le Pl'. Et le livre 21 H.7. 34. b. fuit cite, ou le caſe eſt q̃ in tr̃ns le Def. juſtify quãt a un choſe & plede rien culp̃. dun aut̃, & ſont al iſſue, & le Jurie inquire dun choſe tantũ, & taxe les damages pur ambideux intierm̃t. Fineux tient le verdict bon pur le choſe trove, & de c̃ il aver br̃e de inquirer de damages, quod fuit negatũ p totã cur̃. Dy. 22 El. 269. in ejectione (d) cuſtodiæ acc̃ ove ceſt judgm̃t: Et fuit adjudge, Mich. 14 & 15 Eliz. in ceſt court in tr̃ns p Pooly (e) vers Osburn de ſon cloſe debruſe, & ſervãt batus, & ne dit p qd' ſerviciũ amiſit, le Def. plede non culp̃, & les jurors trove luy culp̃, & aſſeſs damages entierm̃t, & p̃ c̃ le Pl' nad cauſe de actiõ de Battery de ſon ſervãt, p̃ c̃ q̃ il nad avert̃ q̃ il perde ſon ſervice, a ceſt cauſe le Pl' priſt rien per ſon bill: Et Catline donq̃s Chief Juſtice cauſe le reaſõ & cauſe del judgm̃t d'eẽ note en le m̃gent del record. 9 H.7.3. in reſcous acc̃; Et fuit adjudge acc̃ Mich. 30 & 31. in action ſur le caſe, ſur un aſſumpſit int̃ Moor & (f) Bedle, q̃ commence in Bank le Roy, Mich. 28 & 29 El. rot̃ 476. ou le Def. aſſume a fair divers choſes, & le Pl' alledge 2 breaches, dont lun fuit inſufficiẽt, le Def. plede non aſſumpſit le jurie dõe damages generalm̃t; Fuit reſolve, 1, q̃ ſert̃ intẽd q̃ ils don̄ damages p̃ ambideux. 2. q̃ intant q̃ le Pl' nad (g) cauſe de damage p̃ lun, a ceſt cauſe judgm̃t done p̃ le Pl' in

(a) Dalt. Sher. 91. (b) 4 Co. 74. b. 6 Co. 20. a. 11 Co. 39. a. Hob. 93, 217. 1 Rol. Rep. 222, 261. 2 Rol. Rep. 40. 2 Rol. 595. 1 Sider. 313. 3 Bulſt. 55. Cr. Jac. 188, 232, 381, 488. 2 Brownl. 57. Cr. El. 723. Moor 113. pl. 253. 180, 181. pl. 322. 845. pl. 1140. 888. pl. 1250. Perk. Sect. 791. 3 Inſt. 98. Br. condition 151.
(c) Dalt. Sher. 92. Stanf. prerog. 37. b. 38. a. 2 Bulſt. 36. Spelm. Gloſſ. verbo Wreccum.
(d) 10 Co 130. a. 11 Co. 45. b. 56. a. 1 Rol. 784. Dyer 369, 370. pl. 56. Hard. 166. Stiles 399. 2 Bulſt. 28. 1 Leon. 92. pl. 118.
(e) 10 Co. 130. b. 2 Bulſt. 102. 2 Rol. Rep. 52. Hard. 166.
(f) 10 Co. 131. a. 1 Rol. 242, 243, 244, 245, 247. Goldsb. 91. 1 Leon. 170. 1 Rol. Rep. 270, 437. 2 Rol. Rep. 2. 192. Jenk. Cent. 264. Winch. 33. 3 Bulſt. 258. Hard. 399. Palm. 107. Bridg. 58, 59.
(g) Cr. Jac. 115. Cr. Car. 327. 10 Co. 132. a.

in Bank le Roy, fuit revse p bre de Error in Lexchequer Chãbre.
(a) Dalt. Sher. 91. Estray. Animalia vagantia, sive vacantia. Nota Lecteur, al primes (a) le cõmon ley done cibien wreck, jetsam, flotsam, & lagã, sur le mere, & cõe estray (q̃ Bract. appell' animalia vagantia, ou come auts eux appell' animalia vacantia, quia dño vacari debẽt) treasure trove & similia, al Roy p̄ c̄ q̃ p le rule de common ley, quant nul hõe poit claim (b) propty in ascun biens, le Roy eux avera per son prerogative, & pur c̄ Bract. lib. 3. c. 3. dit, Sunt alia quædã quæ in nullius bonis esse dicũt sicut wreccũ maris, grossus piscis, sicut sturgio & balena, & aliæ res quæ dñum non habẽt, sicut animalia vagantia, & quæ sunt dñi Regis ppter privilegiũ. Issint q̃ appiert p Bract. q̃ le Roy ad̄ua wreck sicõe il ad̄ua gross pissons, &c. p̄ c̄ q̃ ils sõt (c) nullius in bonis, ou cõe il ad̄ua animalia vagãtia, sive vacãtia; s. estraies, p̄ c̄ q̃ nul claim le property. Et nota, q̃ wreck est estray sur le mere, veignãt al terr̃ (d) sicome estray des avers est sur le terr̃ veignãt deins asc̄ lieu privilegge: Et le ley done in ambideux cases an, & jour al own̄ a claim eux. Et Bract. in eod' lib. 3 c. 33. f. 135. dit, Navis, nec batellus, nec alia catalla de hiis qui submsi sunt mari, nec in salsa nec in dulci aqua, wreccum erit, cum sit qui catalla illa advocet, & hoc docere poterit: Et issint il aptmt devãt resẽble c̄ a un estray: Et si biens dun infãt (e) fem̃ covert executrix, hõe in prisõ, ou ouster le mere, estraiõt, & sont pclaim solonq3 le ley, si nul claim eux deins le an & jour, ils touts serra lie: m̃ la ley de wreck de mere, car le ley est (f) strict & binding in ambieux cases; mes appiert p loppinion de Bract. & Britton auxi, q̃ flotsam, jetsam, & lagan, cy longe cõe il sont in ou sur le mere nappent al Roy, Mes occupanti concedunt, quia non est aliquis qui inde privilegiũ habere possit, Rex non magis quã privata persona ppt incertũ rei eventũ (& paulo ante reddit inde rationẽ) eo qd' cõstare non possit ad quã regionẽ essent applicanda. Et Britton lib. 1. c. 17. treasure musse in terre, voilomus q̃ soit nre, & q̃ soit trove in le mere adonq̃s soit il al tro̅v. Mes cõe appiert devãt p le resolution de tout le Court, le Roy ad̄ua flotsam, jetsã & lagan, come est avantdit, p son prerogative, comt q̃ ils soient in, ou sur le mere: Car le mere est del ligeãce del Roy, & pcel de son corone Dẽgliterr̃; cõe tenẽt 6 R. 2. tit ptectiõ 46 & Brit. c. 33. biẽ accord ove lopiniõ de Bract. s. q̃ wreck est de chose in nullius bonis; Car la il dit est auxy purchase p frãchise grant, per nosme de chose trove in nulluy biens, sicome wreck de mere, & beasts estraiants, conies, leurees, ptris, & auts beasts savage, per franchise daver wreck trove in son soile, & waive & stray trove in son fee, garrens, & ses demesne terres.

Paschæ

Paschæ xliii Eliz.

In Bank le Roy

Foxley's Case.

FOxley port Action sur le case sur trover de xx Barbits & conversion; Le Def. plede q̃ le Roign fuit seisie del Manour de Newport Pannel en Com̃ N. & q̃ certein psons ignote emblea mesme les Barbits del Pl. & eux amesne deins le dit Manour, & la eux dimitte, & waive; p q̃ le Def. come bailie le Roign del dit Manour, eux seisist al use le Roign, come biens waved, la q̃l est mesm̃ le trover & conṽsion, & demand judgment, si Regina inconsulta; Sur q̃ le Pl. demur & fuit ouste del (a) aid p judgm̃t, car nappiert per le bar del Def. q̃ eux biens fuer̃ forfeit al Roy. Car fuit resolve, si un felon emblea mes biens, & amesne eux en un Manour, & la eux dimitte, ou relinquie eux en son meason, ou en le meason dascun auter, ou en le custodie dascun auter, ou misse eux en la terre, ou auter secret lieu, & puis fua, ceux biens ne sont pas forfeit ne serra dit waif en ley; car (b) waif est, ou le felon en pursuit waive les biens, ou quant le felon pur pavor destre apprehend, pensant que pursuit fuit fait, ayant eux ove luy en son possession, fua, & waiva les biens, en ceux cases ils ser̃ dit waive en ley: Mes si il nad les biens ove luy, quant il fua esteant pursue, ou pur pavor destre apprehend, ils ne sont waive ne forfeit, mes le owner poit prender eux quant il voit sans ascun fresh sute. Mes si le laron en son fuer waive eux, la les biens sont forfeits p le common ley, si le felon sur fresh sute ne fuit attaint al sute del owner des biens; Et le reason (c) q̃ waif est done al Roy, & que le partie pder̃ son property en tiel case, est pur default en le owner, q̃ il ne pursua freshm̃t de apphender le felon, car (d) interest reipublicæ ne maleficia remaneant impunita, & impunitas semper ad deteriora invitat, & p̃ c̃, le ley ad impose cest penaltie sur le owner, q̃ si le laron p son industrie & fresh sute ne soit attaint a son sute, (s. in appeal de mesm̃

Moor 572. Cr. El. 693, 694.

(a) 1 Rol. 150. Cr. El. 693, 694. Moor 572. 2 Inst. 269.

(b) Dalt. Sher. 78. Moor 572. Yelv. 5. Bona waiviata sive derelicta.

(c) Cr. El. 694.

(d) Godb. 240.

le

le felonie) il perdra pur son default touts ses biens, q̃ le laron al tẽps de son fuer waive; Mes si le laron nad eux ove luy quãt il fua, ayant peradventure abscond eux, come est dit, la nul default poit estre en le partie; & pur ceo ils ne ser̃ forfeit, car sil fait fresh sute ap̃s notice del felonie, suffist. Issint nota Lecteur, Bona waiviata seu derelicta, sont biens q̃ux sont emblées & waive ꝑ le laron en le fuer. Bona fugitivorum, sont les biens ꝓpers de cesty q̃ fua pur felonie. Mes est destre observe q̃ si hõe fua pur felonie, ses proper biens ne sont forfeit, tanq̃ q̃ soit trove ꝑ lendictmt devant le Coroner, en case de mort, ou autermt loyalmt trove de record sur acquital, q̃ il fua pur le felonie; Car si les biens dascũ ser̃ forfeit solemt ꝑ le fuer, sans pluis, donq̃s home poit aver tiels bn̄s issint forfeit ꝑ p̃scriptiõ, en m̃ le maner come il poit aver biens waive, estray, ou treasure trove, &c. Mes entant q̃ bona fugitivorũ ne sont forfeit, tanq̃ le fuer soit loialmt trove de record, & pur ceo q̃ choses forfeit ꝑ matter de record, ne poient estre claim ꝑ p̃scripc̃, q̃ nest q̃ matter en fait, a cest cause ils ne poient estre claim ꝑ prescriptiõ. (a) 46 E. 3. 16. b. & 9 H. 7. 20. a. accord. Mes waif, stray, treasure trove, wreck de mere, &c. q̃ux poiẽt estre gain ꝑ usage sans matt̃ de record, la hõe poit ꝑscribe daver eux, 21 H. 6. Prescription, 1 H. 7. 23. b. 9 H. 7. 20. a. 46 E. 3. 16. b. 22 E. 3. tit. Corone 241. Auxy il ne (b) forfeit̃ les biẽs q̃ux il ad al tẽps del fuer (cõe il ser̃ sils fuerõt absolute forfeit ꝑ le fuer) mes ceux q̃ux il ad al tẽps del inditemt ou acq̃tal. Vid. 3 E. 3. tit. Coron̄ 344. & 8 E. 2. tit̃ Coron̄ 296. 5 H. 4. Forf. 52. 33 E. 3. Forf. 30. 42 Ass. pl. 5. vide Stãf. Pleas del Coron̄ 15. 184. c. 192. Et le fuer dũ felon ou coviẽt estre trove ꝑ verdit sur son acq̃tal (car comt q̃ il soit trove de riẽ culp̃, unc̃ il forfeit̃a ses bn̄s ꝑ le fuer, Quia (c) fatetur facin̄, qui judiciũ fugit, & le ley ne voil admitt̃ asc̃ ꝓof encont̃ cest p̃sũpc̃) ou sur indictmt trove super visũ corpor̃ devãt le Coron̄, si soit en case de mort de hõe. Vid. 22 Ass. 76. 13 H. 4. 13. 3 E. 3. tit̃ Forf. 35. & appiert la q̃ comt q̃ le jury q̃ luy trie, trove luy non culp̃, & oust̃ q̃ il ne fua, unc̃ les bn̄s sõt forf. ꝑ force del trov̄ del fuer devãt le Coroner: Mes sur nul aut̃ indictmt le fuer ser̃ trove si non q̃ soit en especial cases; cõe si felon soit arrest de felony, & cõe il est amesn̄ vers de goal, en fuant, ceux q̃ luy ensuõt, ne poiẽt luy reṗnd̄ sãs luy tuer, ꝑ q̃ ils luy decolle, si tout cest matt̃ & le fuer sõt p̃sẽt devãt le Coron̄, ou ascũ aut̃ q̃ ad authority denquirer des felonies, le ꝑty issint tue forfeitera touts ses biẽs & chateux; Et ove c̃ acc̃ 3 E. 3. tit̃ Coron̄ 287, 312. & 328. Et la appiert q̃ en tiel case nest felony en ceux q̃ luy ensuont. 3 E. 3. tit. Forf. 25. si loial hõe tua larõ q̃ voill̃ luy (d) rob, si le larõ ne soy retreit, forfeit̃ riẽs; Et le reason del

Bona fugitivorum.

(a) Dalt. Sher. 79. 9 Co. 24. b. 2 Inst. 281. 3 Inst. 55, 227, 133. Co. Lit. 114. a. Stanf. Prerog. 28. a. 50. a. 46 E. 3. 16. b. 1 H. 7. 23. b. 9 H. 7. 11. b. 20. a. 27 H. 7. 33. b. 2 Rol. 270. Br. Corone 129. Fitz. prescript. 27. 8 H. 4. 2. a. Br. estray. 13. Cr. El. 560. Moor 707. Kelw. 150. b.
(b) Co. Lit. 391. a.
(c) 11 Co. 60. b.

(d) 2 Inst. 56.

del liure en 45 E. 3. tit. Corone 100. q̃ si home emblea di's biens, & le owner en son appeal (a) omit ascū ꝑt, le Roy a'ra tout c̄ q̃ est interlesse, est p̃ ceo q̃ ꝑ cest omission le laron poit escaper, & entant q̃ le owner ne poit a'v eux, le Roy eux a'ra; Et come en ceux cases le ley puny le owner pur son negligēce, ou connivency, issint le cōmon ley abhorre malice en querer le sank dascū sans just cause; Et p̃ c̄, si A. ad les biens de B. ꝑ bailmt̄, ou trover, & B. port appeal de Robbery v's A. p̃ prēdr̄ eux feloniousmt̄, & trove est, q̃ eux fuer̄ les biens le Pl', & q̃ le Def. diēt a eux loyalmt̄, en cest case le Pl' forfeiter̄ les biēs al Roy p̃ son (b) faux & malicious appeal, come est adjudge en 3 E. 3. tit. Corone 367. Auxy bona & catalla felonum en ascū cases ser̄ (c) forfeit ꝑ cōviction, & ascū foits sans conviction; Mes touts foits qn̄t ascū forfeitur̄ est dascun biens de felons, ceo cōvient apperer de record, & c̄ est le cause q̃ tiel biens ne poient estre claim ꝑ (d) prescription, come appiert ꝑ les dits liures. Al cōmon ley les biens dun Clark convict, ꝑ v'dict ou confession fuer̄ forfeit al Roy, non solemt̄ touts q̃ux il ad al tēps del conviction, mes touts les biens q̃ux il acquirer̄ ap̃s, tanqz il ad fait son purgation ou obtain son ꝑdon, car al common ley chescun Clark convict, q̃ ad le benefit de son Clergy, ou puit fair̄ son purgation, ou ne puit c̄ fair̄, sil poit fair̄ son purgation, donq̃s lentry fuit, quod talis commissus est ordinario; & sil ne poit fair̄ son p̃gation, donq̃s lentrie fuit, quod talis cōmissus fuit ordinario absq; purgatione facienda. Et en case qn̄t il ne poit fair̄ son purgation; ou en case qn̄t il puit fair̄ purgation, tanqz purgation fait il remain person disable a prender biens a son opes demesne. Et p̃ c̄, question ad estr̄ fait sur lestatute de (e) 18 Eliz. c. 7. per q̃ est enact, q̃ ap̃s Clergy allow, & arser en le main, le prisoner ser̄ maintenāt enlarge & deliver hors de prison; si un puis lestatue soit convict de felony, & ad son Clergy, & soit arse en la main, & puis acquire biens, sil forfeiter̄ ses biens q̃ux il acquire apres, tanqz il obtein son pardon? Car ore il ne poit fair̄ purgation, & peradventure le cause ou offence fuit tiel, q̃ il ne puit fair̄ purgation. Et Pasch. 41 Eliz. en Bank le Roy, cest doubt fuit resolve, car en Action sur le case sur trover, port de certein biens per (f) Hesdon, come Administrator del Riddlesdon vers Masterson, le Def. plead, q̃ devant le trover le intestate fuit convict de felony, & arse en le main, & puis acquire les dits biens, sur q̃ le Pl' demurr̄ en ley; Et fuit adjudge p̃ le Pl', car entant q̃ lestatut̄ ad toll' lordinary mean & power a cestuy q̃ puit fair̄ purgation,

Bona confiscata, seu forisfacta.
(a) 3 Inst. 227. Dalt. Sher. 80.
(b) Dalt. Sher. 81. 3 Inst. 227.
Bona felonum.
(c) Co. Lit. 114.a. 391. a.
(d) 9 Co. 24. b. 2 Inst. 281. Co. Lit. 114. a. Dalt. Sher. 79. Stanf. Prærog. 28.a. 50.a. 46 E. 3. 16.b. 1 H. 7. 23.b. 2 Rol. 270. Br. Corone 129. 9 H. 7. 11.b. 20.a. 27 H. 7. 33. b. Fitz. Prescription 27. Br. Estray 13. 8 H. 4. 2.a. 3 Inst. 55, 133, 227. Cr. El. 560. Moor 707. Kelw. 150. b.
(e) 5 Co. 50. b. Raym. 370. 6 Co. 68.b. Cr. Jac. 430, 431. 2 Rol. 222. Hob. 291, 294. Hales Pl. Cor. 240.
(f) Hesdons Case Pasch. 41 Eliz. in Bank le Roy. Hob. 292. 6 Co. 68.a.b. Raym. 370, 380. 3 Inst. 114, 242.

que fuit le ordinary mean a fait luy m̄ capable des biens a son oeps demesne; Et qn̄t a cestuy q̄ ne poit fait son purgation, entant q̄ p le dit act est purview, q̄ il serra maintenant enlarge & deliver, q̄ est en lieu dun pdon, p bon construction, m̄ lact de 18 Eliz. ad fait luy icy capable en ambideux cases dacquirer biens a touts purposes, sicome il ad fait son purgation en lun case, ou obtein son pardon en lauť. Mes est ascavoier, q̄ com̄t q̄ le felon ad fait son purgation al common ley, ceo fuit solem̄t a (a) enhabler luy dacquiŕ biens & chatels, car nient obstant le purgation, il forfeit ses biens q̄ il avoit devāt son purgation, & les issues de ses terres auxy tanq; purgation fait, encounter le livre en 3 E. 3. tit. Corone 365. Vide 8 E. 2. Forfeiture 34. Mes ore maintenant p son delivy sur le dit act de 18 Eliz. il est discharge vs le Roy des issues, qux eschieť aps. Et si le Roy pdon le arser del main, c̄ est deins le dit act, com̄t q̄ les pols sont aps Clergy allowe & arser del main, car le pdon ad discharge le punishm̄t. Et la fuit resolve, q̄ si hōe obtain pardon devant conviction, il ne forfeiť ses biens ne pfits de son terre. (b) Laughtons Case, Hill 37 Eliz. en Bank le Roy; Fuit resolve per Popham Chief Justice, & totam Curiam en Bank le Roy, q̄ si hōe soit felo de se, ses biens ne sont (c) forfeits, tanq; c̄ soit presenta, ou trove de record, & c̄ est le cause q̄ tiels biens ne poient estre claim per prescription. Donqs fuit move, si un soit felo de se, & ject en la mere, (d) ou convey, ou sepulte en cy secret manner, q̄ le Coroner ne poit aver le view del corps, & p consequence il ne poit inquire de ceo; Fuit resolve q̄ les Justices de Peace, Justices de Oyer & Terminer, & touts auters q̄ ount power & authority de inquirer de felonies, poient prender presentm̄t de c̄, car c̄ est felony, & c̄ servera & intitler le Roy a ses biens & chateux. Et (e) Deodanda sont biens queux enchisona le mort de home per misadventure, & ne sont forfeit tanq; le matter soit trove de record, & pur ceo ils ne poient estre claim per prescription; Et le Jury qux trove ou present le mort per tiel misadventure doient (f) trover & appriser le deodand auxy; Omnia quæ movent ad mortem sunt Deodanda. Vide 3 E. 3. Corone 326, 341, 342. 8 E. 2. Corone 401 Vide 12 R. 2. tit. Forfeiture 20. Sont auxy bona & catalla in exigendo positorum, & ceux sont qn̄t ascū est appeal ou indict de felony, & il retreit & absenta luy per tant de temps q̄ un (g) exigēt est agard vs luy, p cest retreit (q̄ est un fuer en ley) il forfeiť touts ses biēs & chateux, qux il ad al tēps del exigent agard, com̄t q̄ il soy m̄ rendra sur le exigent, & que

(a) Hales Pl. Cor. 241.

(b) Laughtons Case, Hill. 37 Eliz. in Bank le Roy. Swinb. 72. 3 Inst. 55.

Bona felon' de se.

(c) Stanf. Prærog. 46.a. 3 Inst. 54, 55. Poph. 209. 1 Rol. Rep. 217.

(d) 2 Rol. 96.

(e) *Deodanda.* Stanf. Cor. 20, 21. Dalt. Sheriff 81. 3 Inst. 57.

(f) Dalt. Sher. 81.

Bona in exigendo positorum.

(g) Dalt. Sher. 82. Stanf. Prærog. 47.a 3 Inst. 232.

& q̃ il apres soit trove de rien culp̃; Et c̃ appiert p 22 Lib Ass. ou le case fuit, q̃ home indite de mort de home, soy rend al exigent, & fuit arraign̄ maintenant, & trove de rien culp̃, & pur c̃ q̃ il vient p exigent, p q̃ assets fuit prove, q̃ il soit retreit, ses chateux fuer̃ forfeit, & le Jury q̃ luy acquite value les biens. Et en 41 Ass. pl. 13. al temps del exigent agard ũs dits en appeal de mort, bře fuit agard al vic̃ denquirer de lour biens & chateux, & eux seiser; Mes peradventure al temps del exigent agard, le Def. fuit imprison, ou ouster le mere, quel remedy ad le party de reaver ses biens? Car come Knivet en 43 E. 3. 17. dit, le pty navera (a) restitution de ses chateux (coment de bře de exigent erronicè emanavit) cy longe cõe lagard del exigent (q̃ la est appell' un Judgmt) estoit en force, nient defeat. Et en m̃ le livre est dit, q̃ si home ad chře de pdon de eigne date (b) q̃ lexigent, les chateux sont saves, car le cause de salvation appiert de record; Mes nappiert p le livre quel remedy le party ad, si le cause del salvation de eux soit p mat̃ en fait, come pur imprisonmt, ou q̃ le party fuit ouster le mere &c. Et Mich. 33 & 34 Eliz. en Bank le Roy in (c) Marshes Case, fuit resolve, q̃ en tiel case le party, ou ses Executors ou Administrators, averont bře de Error a reverser le dit agard del exigẽt. Et un president en 18 (d) H. 7. en m̃ cesty Court, en case dun Eaton, ũs q̃ sur indictmt de mort, un exigẽt fuit agard en le County de Lincoln, & le dit Eaton morust, & ne unques fuit convict ou attaint, & ses Executors port bře de Error a reṽser le dit agard del exigent, car entant q̃ le Roy est entitle p matter de record de fine force c̃ covient estre avoid p matter de auxy hault nature; Et entant q̃ les parols del general bře de Error sont (si (e) judicium inde reddit̃ sit) q̃ nest pas en tiel case, il avera special bře recitant tout le special case, come p le president appiert. Vide 30 H. 6. tit. Forfeiture 31. 19 E. 3. Forfeiture 19. 8 E. 3. 11. 29 E. 3. 29 & 30. 37 H. 8. tit. Estray Br. 9. vide Stanf. Pleas del Corone 186. Et issint fuit resolve, q̃ en le case al barre la ne fuit cause de aid, & pur ceo per le rule del Court, il fuit ouste del aid.

¶ 2. Fuit agree, q̃ le demurr̃ ne fuit peremptory, mes r̃nd ouster. Vide ore lestatute de 21 (f) H. 8. cap. 11. concernant biens waives, & pur restitution de eux.

(a) 3 Inst. 232, 242

(b) Dalt. Sher. 87.

(c) 1 Leon. 325, 326. Owen 147, 148. Cr. El. 225, 273, 274. 1 Rol. 912. Godb. 377, 380.

(d) Eatons Case, 18 H. 7. en Bank le Roy. 2 Sid. 93. 11 Co. 41. a. Cr. Jac. 357. 1 Rol. Rep. 85.

(e) Co. Lit. 288. b.

(f) 3 Inst. 242.

Pasch. xliii Eliz.

In Bank le Roy.

Mallory's Case.

Cr. El. 805, 806, 832, 833.

IN Replevin enter Mallory Pl', & Pain Defendant: Le case fuit tiel; Labbot & Covent de Sawtry p fait indent demise le lieu, ou, &c. al Anthony Mallory pur 120 ans; rendant annuelmt durant le dit term, al dit Abbot & Covent, ou a ses Successors, le rent de 8 Marks, destre pay al Feasts de St. Michael & Annunciation de nre Dame, p owel portions, sur condition, q si le rent soit arrear, & un distres prise p le lessor, &c. & nient redeem deins 6 semaigns, q bien lirroit al lessor, &c. a reenter; Labbot & Covet surrender lour Monastery, & touts lour possessions al Roy H. 8. le term per divers mean assignmts fuit assign al Mallory le Pl', & le revsion p divs mean conveyances a un S. q levy fine de ceo al Doctor Bellay, q devant ascun attournment p son fait grant le reversion a Tho. Bellay son fits, & ses heirs, a q le termor attorne, & pur le rent arrere, & distres prise solonq le condition, &c. Pain per commaundment de Tho. Bellay le fits, reenter & distrein lest bestes del Pl' damage fesant; Et le question fuit, ou le reentry de Tho. Bellay le fits soit loyal ou nemy. Et apres divers arguments al barre & al bench; Fuit resolve per totam Curiam, que lentrie fuit loyal. Et en cest case 4 points furent resolve. ¶ 1. Que le dit (a) reservation en le disjunctive fuit bon, car en le primer part del reservation, les parols sont; Rendant annuelment durant le term & les parols subsequent doient aver tiel interpretation, que ils ne confoundent eux q precede, mes touts ensemble poient estoier & satisfie le intention & meaning des parties. Et tiel construction les Judges fesoient en Hill & Granges Case, Plowd. Com. f. 164.

(a) Cr. Eliz. 832. 1 Vent. 148. Hard. 91, 94. 2 Sand. 369. 1 Bulst. 175. Ley 79. 3 Bulstr. 328. Palm. 482. 1 Jones 309. Godb. 363, 449, 450.

ou

ou lease fuit fait in January p̄ ans, rendant annuelmt durant le term al lessor un rent, payable al Feasts de St. Michael & de (a) Annunciation, qux darrein parols sert issint marshall & transpose, q̄ les primer parols, s. rendant annuelmt, ne perdet ascun de lour force, & p̄ c̄ le ley fert construction, que le rent serra paie al Feasts de Annunciation & St. Michael. Et fuit agrée q̄ rendant rent annuelment durant le term a un & a ses successors, & rendant rent durant le term a luy, ou a ses successors, sont tout un; car si le rent soit reserve a luy & ses successors, coment q̄ les parols sont joint, & en le copulative, uncore en construction del ley, le lessor avera ceo durant son vie, & son successor apres son decease. Issint quant rent est reserve annuelment, durant le term, (b) al un ou a ses successors, ceux parols (a luy ou a ses successors) sont parols de explanation, s. a directer le lessée a q̄ il paiera le rent durant le term, viz. al lessor durant son vie, & apres son mort a ses successors, car sans ceux parols, s. al lessor ou ses successors, le reservation ust estre bon per force del ceux parols (rendant annuelment durant le term) come est agrée in 10 E. 4. 14. & 27 (c) H. 8. 19. Mes si feoffment soit fait al A. a aver & tener a luy (d) ou a ses heirs, la il nad forsq̄ estate pur vie, car la fault parols precedent, a directer les parols en le disjunctive; Et ceux parols (ses heirs) sont del essence del estate, & sans ceux nul estate de inheritance passer. Issint, & pur mesme le reason, si un reservation sur feoffment en fée soit fait a un, ou ses heirs, tiel reservation nest bon, forsq̄ durant le vie del feoffor. Et issint nota le diversity. Vide Chapmans Case, Plowd. Com. fol. 284. ou copulative serra prise p̄ disjunctive; Mes icy disjunctive amount en construction a un copulative. Vide le case en (e) 21 E. 3. 29. b. ou un fuit oblige, que quant lobligor veignet a son Aunt, il enfeoffer lobligée, ou les heirs de son corps, de certein terres, & lobligée, quant lobligor vient al son Aunt, request luy a luy enfeoffer, le quel de faire lobligor refuse; Et fuit adjudge que il ad forfeit son obligation; Car coment que le condition fuit en le disjunctive, & que le condition est touts foits pur le advantage del obligor, uncore entant que le feoffment fuit destre fait, quant il vient a son Aunt, & quant il vient a luy, lobligée fuit en vie, & pur ceo ne fuit possible adonques de enfeoffer son heir, a cest cause il covient performer tiel part del disjunctive, que adonques fuit possible destre perform. Nota Lecteur bon case a prover le principal case, car entant que le rent

(a) Cr. Eliz. 832. Hob. 172. Co. Lit. 217. b. 2 Rol. Rep. 213. Plowd. 171. a. 2 Sand. 368. 10 Co. 106. b.

(b) Cr. Eliz. 832. Hardr. 91, 94. Ley 79. 1 Ventr. 148. 2 Sand. 369. Palm. 482. 1 Bulst. 175. 3 Bulst. 328. Godb. 363, 449, 450. 1 Jones 309.

(c) 27 H. 8. 18. b.

(d) Co. Lit. 8. b. 214. a.

(e) Plowd. 289. a. 1 Rol. 450. Devant 22. a. Br. Condition 47. Bridg. 40.

rent fuit reserve destre pay annuelmt durant le term, al tiels Feasts en certein al lessor ou a ses successors, le lessee a m̄ les Feasts doit payer le rent a cesty pson q̄ adonq̄s poit ē receiver, & ē est le lessor m̄, & le lessee ne poit eliger, a paier ceo al dits Feasts a luy, ou al successor, cy longe come le lessor vivet, car nest possible q̄ cesty q̄ nest adonq̄s in rerum natura receiva ē. ¶ 2. Fuit resolve, q̄ comt q̄ les pols del statute de 32 H. 8. c. 34. sont general (As also other persons being Grantees or Assignees, to or by any other person or persons, &c. shall and may have like advantage, as the Lessors or Grantors themselves, &c. ought, should or might have had or enjoyed, at any time or times, &c. unc̄ le grantee ou assignee p fine ne prendra advantage dun condition sans (a) attornmt; Car qnt un statute
(a) Co. Lit. 215.a. 309. b. Hob. 178. ple dun assignee, &c. est destre entend de tiel compleat assignee, q̄ ad touts ceremonies & incidēts requisite p le ley a tiel assignee, & nemy a toller ascun ceremony ou (b) circumstāce, q̄ le ley
(b) Dyer 28.pl.182 require, ne a fait ascun chose contrary a le cōmon ley: Come est agree en 28 H. 8. f. 28. q̄ ou lestatute de 27 H. 8. c. 10. de Uses, purview, q̄ le actuel possession sert adjudge solonq̄ le use, uncore il covient daver circumstance, q̄ est requisite p le cōmon
(c) 9 Co. 26. b. ley, s. actuel entry en fait. Issint est agree en (c) 4 E.4.31.a.b.
(d) 2 Inst. 190, 191 9 Co. 26.b. Stanf. Cor. 85.b. 86.a.b. fuit ordein p lestatute de 1 (d) E. 4. q̄ touts inquisitions prise devant le Viscount en son Turn, ou County, sert livere al Justices de Peace al prochein Sessions, a q̄ ils sert proces sur eux, sicome sur inquisitions prise devant eux m̄. Un presentment fuit fait en le Turn sur lestatute de Liveries, q̄ fuit deliver solonq̄ lestatute al Justices del Peace al prochein sessions, quex proceed sur eux; Et fuit tenus q̄ ē fuit encounter ley, car lestatute de 1 E. 4. est entend de loyal & sufficient presentmts en ley, & nemy en presentmts q̄ le Visc ne poit prendr per le common ley. Issint est tenus en 22 E.3. tit. Corone 276. que lestatute de Westm. 2. c. 12. ne sert Moygne q̄ fuit appeal & acquite capable de damag̃, car il fuit disable p le common ley. Et fuit dit, q̄ sur m̄ le reason fuit adjudge en le case dun Duke,
(e) Co. Lit. 215.a. 309. b. Hob. 178. q̄ le conusee dun fine devant attournmt ne prendera (e) benefit del condition p le dit statute de 32 H. 8. ¶ 3. Fuit resolve, q̄ comt q̄ Doctor Bellay m̄ ne unques puit aver prise advantage del condition, entant q̄ il navoit attournmt, uncore entant q̄ per le fine le reversion & le rent fuit veste en luy, queux il ad grant a son fits, a que le termor ad attourn; a cest cause
(f) Cr. El. 832. il prendr (f) advātage del condition, q̄ son pier ne puissoit, p ceo que il fault attornment, que son fits ad, & les parols del

32 H. 8.

32 H. 8. That the Grantees or Assignees shall and may have and injoy like advantage, &c. as the said Lessors or Grantors themselves, &c. if the Reversion had not comen to the hands of our Sovereign Lord, &c. sont bien satisfie, car icy en cest case est un compleat grantee & assignee, & pur ceo il prendra mesme le benefit come Labbot mesme que fist le lease puit. Auxy fuit resolve, que ceux parols, as the said Lessors or Grantors, &c. ne serra entend del immediate grantor del reversion, mes al ascun grantor devant que puit aver prise benefit del condition. ¶ 4. Cest diversity fuit prise & agrée pur ley, cestascavoir, inter un expresse attornment del party, & un act que amountera en ley a un attornment; Car si lease pur vie ou pur ans, soit fait, rendant rent, &c. & puis le reversion est grant, &c. a B. per fine, & devant attornment B. disseisie, ou ouste le lessee, & enfeoff C. le lessee reenter, ceo ne amountera a un attornment en ley, a faire privity a C. q̄ il distr̄ p̄ le rent, car il ne serr̄ en melior estate q̄ son feoffor fuit; come fuit adjudge in Communi Banco Mich. 36 & 37 Eliz. Rot. 420. en le case dun (a) Owsey. Mes auterment est, si le lessee ust expressement attorn al feoffee. Issint Popham Chief Justice dit, q̄ fuit adjudge en (b) Knottisfords Case, ove q̄ il fuit accounsel 30 ans passe; Que ou conusee per fine dun reversion devant attornment bargain & vende le rev̄sion al auter p̄ fait indent & inrolle solonq; lestatute, q̄ le bargainee ne distreinera pur le rent reserve sur le lease, car il ne serra en melior condition que cestuy que fist le grant a luy, car (c) nemo potest plus juris in alium transferre, quam ipse habet; Mes si le conusee ad ewe expresse attornmt̄, donques le bargainee distreinet sans ascun attornmt̄. Mes si le conusee dun reversion per fine devant attornment morust sans heir, per q̄ lestate que il ad escheat al Seignior, le Seignior en cest case distreinera sans ascun attornment, come Littleton fol. 131 & 132. & 39 H. 6. fol. 32 & 38. Prisot teigne) uncore le conusee mesme ne poit; & le reason est, pur ceo que le Seignior per escheat ad perde son Seigniory, & il ne claim come heir, ou assignee al conusee, mes p̄ vertue de son Seigniory paramount. Nota Lecteur, auterment est come ad estre dit, si le conusee devant attornment bargain & vende le rev̄sion per fait indent & inrolle, car lestatute de 27 H. 8. execute le possession en mesme le quality, manner, form & condition, come il ad le use; Et quant le conusee devant attornment bargain & vende le rev̄sion, le use q̄ est derive hors de son state que

(a) Owseys Case, Mich. 36 & 37 El. 6 Co 68. b. Cr. El. 264, 354. Owen 23. 2 Anders. 15.
(b) Cr. El. 832. 6 Co. 68. b.
(c) 4 Co. 24. b. 6 Co. 57. b. 68. b. 8 Co. 63. b. Co. Lit. 309. b.
Lit. lib. 3. tit. Attornment.

que fault attornmt, covient estre de m le nature & quality, come ceo fuit hors de q il fuit derive. Mes si le bargainee en tiel case avoit obtein expres attornmt, c suffist: Et issint nota ceux bon diversities. En cest case fuit dit per Popham Chief Justice, & nient deny p ascun, q si lessor en labsence del lessee enter, come est avantdit, & fait feoffmt en fee, & le lessee reenter, coment q ceo amount a un attornmt en ley, uncore sans notice done de cest feoffmt al lessee, le feoffee ne serra done del rent reserve sur le lease pur entry p condition infreint; Car voier est, q le feoffee poit distrein, ou aver action de dette pur le rent ou aver acc de Wast en tiel case; car en son avowry, ou count, il covient alledge le feoffment dont le lessee avoit notice; Mes sil poit demand le rent sur le codition sans notice, nest possibl' q le lessee scaver a q il payera son rent, a saver s term, ne daver notice del feoffmt en tiel case, devant q il ad forfeit son term. Issint si le lessor bargain & vende le revsion per fait indent & inroll', le bargainee (coment q ne besoign attornmt) ne unqs prend benefit dun condition, sur demand de rent, sans doner notice al lessee del bargain & sale, car coment q le bargain & sale p fait indent & inrolle soit de record, unc entant q ceo poit estre inroll' en tants des Courts en cy secret manner, le ley ne voil' coarcter touts les fermors Dengleterre, qux ont conditional leases, a fair chescun 6 mois tiel infinite search, a saver lour term; Mes le ley pur salvation del infeft & term del lessee, cohertet le bargainee (q est a prend benefit del condic) a doner notice de ceo al lessee, q est tout oustermt estranger a ceo.

8 Co. 92. a. Cr. Jac. 146, 193, 476. 2 Rol. Rep. 143. Bridg. 130. Mod. Rep. 87. 4 Co. 70. b. 2 Co. 68. b. Cart. 93, 172. Co. Lit. 215. b. Hob. 178. Latch 15. Cr. Car. 392. Godb. 162. Palm. 207, 210, 434. Poph. 165.

Nota Lecteur, le lessee (come Littleton) dit ne serra per la ley misconusant des feoffmts faits sur mesme les terres, ceo est destre entende quant al distres, action de dette, & action de Wast, en qux cases le ley cohertet le feoffee en son avowry, & count, a doner notice, come ad estre dit. Mes Littleton nest pas intende, quant al demand del rent dav advantage dun condition sans notice ent done, come est avantdit. Et Littleton la dit, q en tiel case le feoffee apres regres fait per le lessee, av a action de Wast; Mes neq Littleton neq ascu des livres en 18 E. 3. 47. Rob. Bowssers Case, 46 E. 3. 30. Pomerays Case, 34 H. 6. 6. 5 H. 5. 12. ne ascun auter livre parle del demand & entrie sur le condition infreint.

Lit. lib. 3. cap. Attornment fol. 130. Lit. Sect. 576. Co. Lit. 318. b.

Trin. xliii Eliz.

Rot. 406. In Communi Banco.

Wades Case.

EN Repleg̃ int̃ Foxcroft Pl', & Wade Def. le case fuit; Foxcroft copyholder in fee, surrender al use de W. Wade pier le Def. & ses heirs, sur condition; q̃ si le Pl' payeṫ al dit W. Wade 250 l. legalis monetæ Angliæ le 24 jour Novemb, &c. ad domum suam mansionalem, &c. q̃ donques le surrender serṫ void; Et tender & refusel fuit alledge, &c. & issue fuit prise sur le tender al dit W. Wade; Et les Jurors done especial verdict, s. que Foxcroft le dit 24 jour de Novemb. inter horas 7 & 8 ante meridiem ejusdem diei deliberavit cuidam M. filio suo, & cuidam A. S. 250 l. in moneṫ (Anglice Mony) scilicet, quinque solid' de Hispanico argenṫ (Anglice in Spanish Silver) & duo duplices Auri selopi (Anglice two double Pistolets) & resid' prædict' summæ 250 l. fuit in bona legal' moneṫ Angliæ, & etiam deliberavit præfaṫ M. & A. 34 s. legalis monetæ Angliæ, & q̃ le Pl' require eux & chescun de eux a tender & paier les dits 250 l. solonq; le form & effect del condition; Et trove fuit ouster, q̃ ils inter horas 9 & 12 ante meridiem ejusdem diei, super quandam mensam ibidem, obtulerunt 250 l. & que W. W. la adonques nombre 244 l. mes en respect del dit 5 s. in Spanish Mony, & des dits 2 Pistolets, il refuse a receiver les deniers, sur q̃ M. & A. offer les dits 34 s. en argent al dit W. W. requirant luy a prender argent en lieu des Pistolets & Spanish Mony, le quel auxy il refuse; Et puis circa horam duodecimam ils tender al dit W. W. le residue in Silver, French Crowns, & Angels, currant Mony Dengliterre, queux en semblable manner il refuse dacccepter; Et puis ante occasum solis ad ostium domus, ils offer a luy a paier le somme de 250 l. tout

en

Co. Ent. 657. pl. 10.

en silver, esteãt en bags, mes ne mre ascun part de ceo; Et il dit, quod recipere veller, sed non recepit, & al coucher de soel le dit A. enter en la meason, & super quãdam mẽsam deposuit pd' 250 l. esteant en bags, sed ill extra baggas pd' non ostendit, quodq; pd' W. W. differebat recipere pd' 250 l. usque post occasum solis, & adtunc requisitus ad recipiend', recusavit, allegando q̃ le sole fuit couche, & ea de causa recipere noluit; Et si sur tout le dit matter la fuit ascun bon tender, ou nemy, fuit le question. Et en case 4 points fuer resolve. ¶ 1. Comment q̃ le darrein temps de payment des deniers p force del condition est (a) conveniẽt tẽps, en q̃ les deniers poient estre nombre devant le coucher del soel, uncore si tender soit fait a cesty q̃ doit ceo receiv al lieu specifie en le condition a ascun temps del jour, & il c refuse, le cõdition est save al touts jours & ne besoigne al mortgagor, ou obligor, &c. a faire tender de c arrere devant le darrein instant, car p lexpresse letter del condition les deniers sont destre pay sur le jour indefinitemt & convenient temps devãt le darrein instant est le extream tẽps appoint p ley, al entent q̃ lun ne pventera lauter, lun esteant ascun foits la, & lauter nemy, & lauter esteant ascun foits la, & lauter nemy, & p c le ley appoint le extream temps en le jour, al intent q̃ ambideux pties poiẽt certeinmt concurre ensembl, car le ley q̃ touts foits require conveniency, & est foundue sur le experience de le sages ne coarcter ascun des pties a fair Attorney, ou a reposer cõfidence ou trust en ascun auter a payer c pur luy quant il voil ceo faire luy m, (car non temere credere est nervus sapientiæ.) Mes si ambideux des parties concurre a ascun temps de m le jour, & le mortgagor, ou obligor, &c. fait || tender en le lieu, &c. al mortgagee, &c. & il refusa, le penalty est save a touts jours, & ne besoign a fair ascun novel tender p un cõvenient temps devant le darrein instant. Et issint sur ceux reasons vous mieulx entendres vre livres. 19 H. 6. 76. 20 H. 6. 32. 22 H. 6. 46. 7 H. 7. 7. 6 H. 7. 2. 32 H. 8. tit. Condition Br. 192. Plowd. Com. Kidwellies Case f. 70. & Hill & Graunges Case, fol. 173. 4 E. 6. Br. Tender 41. 19 Eliz. Dyer * 354. ¶ 2. Ou le condition fuit, q̃ il payer a luy 250 l. legalis monetæ Angliæ; Fuit resolve, q̃ le dit Spanish Silver issint tendre, fuit loyal (b) Mony Dengliterre, car c fuit fait currãt p proclamation en temps des Raignes Ph. & Mar. Auxy que French Crowns fuer currant & loyal Mony Dengliterre per proclamation auxy. Et le Roy (c) p son absolute prerogative poit fair ascun forreign Coin loyal Mony Dengliterre a son plea-

1 Point.

(a) Co. Lit. 202. a. 7 Co. 28. b. Cr. El. 14. Moor 122.

|| Co. Lit. 202. a.

* Co. Lit. 211. a. 3 Keb. 19. 1 Rol. 449. 2 Bulstr 145. 13 Co. 2. 2 Keb. 816. 8 Co. 92. Cr. El. 298, 299. Dyer 354. pl. 32. 3 Bulst. 326. Mod. Rep. 88. Carter 93.

2 Point.

(b) Co. Lit. 207. a. b 208. a. Dyer 82. b.

(c) Co. Lit. 207. a. Dav. 19. b.

pleasure p son pclamation, quod nota. ¶ 3. Que si home tender pluis q̄ il doit paier, cest assets bon, car (a) omne majus continet in se minus, & lauē doit acceptē tant de ceo come est due a luy, (b) quando plus fit quam fieri debet, videt̄ etiam illud fieri qd' faciendū est. Et in majore summa continet̄ minor. ¶ 4. Que ou le Pl' tender tout le 250 l. in (c) in bags sans ostender ē ou numbring de ē, fuit resolve, q̄ le tender fuit assets bon, si le Verdit soit q̄ la fuit 250 l. in les bags; Et issint ad estre adjudge in Bank le Roy in Winters Case, car qnt le condition est, q̄ il paieē 250 l. le mortgagor fait tout ceo q̄ est requisite p le ley a luy a faiē, sil provide les deniers, & offer ceux al mortgagée en bags, q̄ est usual manner a porter mony, & donqs est le part del mortgagée a numbē ceo sil voile, ou sil voile don̄ foy al mortgagor, il poet accepter ceo sans numbring de ceo, donques si le numbring de ceo appent al mortgagée, p consequence il doit mitē ceo hors del bags, q̄ est incident a ceo, car sans ceo il ne poit ceo numbē, & si le mortgagor mitē les deniers hors del bags, uncore est al peril de mortgagée, a voier ē, car peradventure ils poient estre counterfeits, & uncore aō grand apparance de bon & loyal mony, auxy est a son peril a numbre ceo. Et si home soit lye a payer 40000 l. a tiel jour, sil tender ceo in bags est sufficient, car ne poit estē numbre in un jour, & issint per ceo apprehendres le melior opinion in 22 E. 4. (d) f. 21. Et fuit dit q̄ fuit adjudge inter Vane & Studley, q̄ ou le lessor demand rent de son lessee solonq̄ le condition de reentry, le lessee paya le rent al lessor, & il ceo receive & mitē ceo in son burse, & puis in revelwant de ceo a m̄ le temps, il trova inter les deniers, q̄ il ad receive ascun counterfeit pieces, & sur ceo il refuse demporter les deniers, mes reenter pur le condition infreint: Et fuit adjudge, q̄ lentrie ne fuit loyal, car quant le lessee ad accept les deniers, ē fuit a son peril, & apres cest allowance, il ne prendeē exception al ascun de eux.

(a) 4 Co. 46. a. Co. Lit. 52. b. 285. a. 2 Co. 68. a. 6 Co. 43. b. 3 Inst. 109. 1 Bulstr. 105. 2 Bulstr. 48.
(b) 8 Co. 85. a.
(c) Co. Lit. 208. a. Noy 74.
(d) 22 E. 4. 41. a.

Trin.

Trin. xliii Eliz.

In Communi Banco.

Foliamb's Case

IN action de Wast per Foliamb vers Sir William Bowes & sa feme. Le Pl' avoit Estrepement direct al Vic. In cest case deux points fuer resolve. ¶ 1. Que brief de Estrepemt gist in action de Wast, (a) cibien a ascū tēps devant Judgment, come apres Judgmt, & devant execution; car sans question, il ne poet recover damag pur pluis q̄ il ad contein in son count, & il ne poet assign ascun wast fait apres le bre purchase. Car les pols del bre sont, fecit vastum en le preterperfect tense: Et pur ceo il ne poit assigner wast fait apres le bre. ¶ 2. Ou les parols del bre sont, Tibi præcipimus, quod ad messuagium pd' personaliter accedeñ, totaliter ordinari facias, quod vastum seu estrepamentum de eodem messuagio, contra formam Statuti pdict' non fiat, pendente placito pdict' indiscusso. Fuit resolve, q̄ le viscount per force de cest brief, poit (b) resister ceux, queux voil fait wast; Et sil autermt ne poit, il list al luy de imprisoner eux, & a fait garr al auters a ceo fait; & si soit necessary, il poit prender posse comitatus p̄ son aid, Quia quando aliquid mādatur, mandatur & omne p qd' pervenitur ad aliud. Et issint un doubt in divs livres, s. 4 E.3.32. 21 E.3.3. 22 E.3. 2. 6 H.4.1.b. 33 (c) H.6. 6.a. 14 (d) H.7.7,8. F.N.B. 60·Y. & 61.C.K.L. bien resolve.

(a) Cr.El.393,774. Moor 622. 2 Inst. 304,329. 12 R. 2. Estrepment 6.

(b) 2 Inst.299,329 3 Bulstr.200. Hob. 85.

(c) Fitz. Estrepmt 5. Br.Estrepmt 6.
(d) 14 H.7. 10. a. Br. Estrepment 9.

Hill.

Hill. xliv Eliz.

In Bank le Roy.

Oland's Case.

TRespass per Oland vers Burdwick, que commence in Banco Regis, Hill. 37 Eliz. Rotulo 924. sur un special Verdict, le case fuit tiel. Feme Coppholder de certein terre, durante viduitate sua, solonque le custom del Manor, emblea le terre, & devant le severance des emblements, prist Baron; Et si le Baron, ou Seignior del Manor avera le emblements, fuit le question. Et fuit adjudge, le (a) Seignior avera les emblements: Car coment que al temps de embléer, lestate sa feme fuit incertein, & coment que son Estate determine per limitation, & nemy per condition, ou in fait (come en case de re-entry) ou in ley, (come forfeiture) uncore pur ceo que ceo determine per lact del lessee mesme, a cest cause le Seignior avera les emblements, & nemy le Baron. Issint si feme seisie de terre durante viduitate sua, fait lease pur ans, & le lessee emble le terre, & puis la feme que fist le lease, prist Baron, ore le (b) lessee navera les embleaments; Car coment que son estate est determine per lact dun estranger, uncore il ne serra (quant al primer lessor) en meliour case que son lessor fuit. Est communement tenus en nostre liures, que si home lessa terres a volunt, & puis le lessee emblea le terre, & puis le (c) volunt est determine, que le lessee avera les emblements. Mes fuit agree, que si le lessee (d) mesme determine la volunt devant le severance des blees, il navera les emblements, pur ceo que il ad determine son interest per son act demesne.

Goldsb. 189, 190. Moor 394, 395. Cr. El. 460, 461.

(a) 1 Rol. 726. Co. Lit. 55. b. 2 Bulst. 213. 2 Inst. 81.

(b) Goldsb. 189. 1 Rol. 727. Cr. El. 460, 461.

(c) Cr. El. 461.

(d) Goldsb. 190. 1 Rol. 726 Cr. El. 461. Co. Lit. 55. b.

(a) 3 Keb. 166, 207. Goldsb. 190. 1 Rol. 861. 2 Rol. 807.

(b) 1 Rol. 861. 2 Rol. 807.

(c) Goldsb. 190. Moor 395. 1 Rol. 726. Cr. El. 461.

(d) 1 Rol. 726. Cr. El. 461.

demesne. Si home fait lease a volunt, & le lessor est (a) utlage, per que le volunt est determine, le Roy avera les profits; Uncore le lessee a volunt avera les embleaments. Mes si lessee a volunt soit (b) utlage, per que le volunt est determine, uncore le Roy avera les embleaments. Vide 9 H. 6. 20 & 21. Mes fuit tenus, si lease soit fait al Baron & Feme durant le coverture, & le Baron emblea le terre, & puis ils sont (c) divorce, causa præcontractus, le Baron avera les embleaments, & nemy le lessor: Car coment que le suit est lact del party, uncore le sentence que dissolve le marriage, est le judgment del ley, & judicium redditur in invitum. Et pur ceo, le Baron in tiel case avera les embleaments, mes si lease soit fait a un tanque il fait (d) waste, & il emblea le terre, & puis fait waste, il navera les embleaments. Causa qua supra.

Trin.

Trin. xliv. Eliz.

Rot. 501. In Communi Banco.

Pinnel's Caſe.

Pinnel port Action de Det, ſur un Obligation vers Cole, de xvi l. pur payment de viii l. x s. 11 die Novemb. 1600. Le Def. plead, que il al inſtance del Pl devãt le dit jour, ſ. primo die Octobris, anno 44 apud W. ſolvit querenti 5 l. 2 s. 2 d. quas quidem 5 l. 2 s. 2 d. le Pl (a) accept in plein ſatisfaction de viii l. x s. Et fuit reſolve per totã Curiã, q̃ paiment de meinder al jour, in ſatisfaction de greinder, ne poit eſtre ſatisfaction pur tout, pur ceo que appiert al Judges, que per nul poſſibility (b) meindre ſumm poet eſtre ſatisfaction al Plaintiff, pur greinder ſumm. Mes done dun chival, (c) eſperver ou robe, &c. in ſatisfaction eſt bon. Car ſerra intend que chival, ou eſperver, ou robe, &c. ſerra pluis beneficial al Plaintiff que les deniers, in reſpect de aſcun circumſtance, ou auterment le Plaintiff ne voile ceo accept in ſatiſfaction: Mes q̃nt tout un entier ſumm eſt due, p nul intendmẽt lacceptance de (d) pcel poit eſtre ſatisfaction al Plaintiff. Mes in le caſe al barr fuit reſolve, q̃ le paymt & lacceptance de pcel devant le (e) jour, in ſatisfaction de tout, ſerra bon ſatiſfactiõ in reſpect del circumſtance de tẽps, car padventure pcel de ceo devant le jour, ſerra pluis beneficial a luy, que lentier al jour, & le value del ſatisfaction neſt material. Iſſint ſi jeo ſoy tenus in 20 l. a paier a vous 10 l. al Weſtm̃, (f) & vous requeſt moy a payer a vous 5 l. al jour a York, & vous voile accepte ceo in plein ſatisfaction del entier 20 l. ceo eſt bon ſatisfaction

Moor 677, 678.

(a) Doct. placit. 267.

(b) Perk. Sect. 749. Co. Lit. 212. b.

(c) 9 Co. 79. a. Perk. Sect. 749. Co. Lit. 212. b. Yelv. 11. 1 Bulſt. 66. Cr. El. 46, 193. Cr. Jac. 254.

(d) Co. Lit. 212. b. Yelv. 11. Perk. Sect. 749. Dall. 49. pl. 13. Moor 48.

(e) Moor 677. Co. Lit. 212. b. Cr. El 304.

(f) Moor 678. Cr El. 304. Co. Lit 212. b.

pur lentier; car lexpences a payer ceo al York, est sufficient satisfaction. Mes in cest case le Plaintiff avoit judgment pur le insufficient pleading, car il ne plead, que il ad pay le 5 l. 2 s. 2 d. in plein (a) satisfaction (come per le ley il devoit) mes plead le payment de part generalment, & que le Plaintiff (b) accept ceo in plein satisfaction; Et touts foits le manner del tender & del paiment, serra direct (c) per cesty que fait le tender ou payment, & nemy per cestuy que eux accept: Et p cest cause judgment fuit done pur le Plaintiff. Vide Lecteur (d) 36 H.6.tit. Barre 37. en debt sur obligation de 10 l. le Def. plead, q̃ un F. fuit oblige p m̃ le fait ove luy, & chescun in lentierty, & que le Plaintiff ad fait acquittance a F. port date devant le obligation, & deliver apres; per quel acquittance il soy conust destre pay de 20 s. in plein satisfaction de 10 l. Et ceo fuit adjudge bon barre, car si home conus soy mesme destre satisfie per (e) fait, cest bon barre sauns riens receiver. Vide 12 R. 2. tit. Barre 243. 26 H. 6. Barre 37. & 10 H. 7. &c.

(a) 9 Co. 80. b. Doct. placit. 19. Winch. 76. Stiles 263.
(b) Doct. placit. 267. Cr. El. 193. Stiles 263.
(c) Cr. El. 68. 2 Brownl. 107, 108. Styles 239.
(d) 9 Co. 79. b. 26 H. 6. Fitz. bar. 37. Dall. 49. pl. 13.
(e) Doct. placit. 267. Co. Lit. 212. b. Dall. 49. pl. 13. Moor 47, 48.

Mich.

Paschæ i Jacobi.

In Communi Banco.

Edrich's Case.

INter Edrich & Smith in Repl, un case fuit adjudge sur le darrein branch del statute de 32 H. 8. cap. 37. Et le Case fuit tiel: A. seisie in fee de terr tenus in Socage, per son volunt in escript, devise un rent ove clause de distress al B. pur vie C. & morust; Le heir lessa la terr charge pur vie al D. le remainder al E. in fee, le rent est arer per divers ans in le vie de D. D. morust & puis C. morust B. distrein cestuy in rem pur touts les arrerages incurr in le vie de D. Et si il serr charge in cest case pur touts les arrerages per le dit act, fuit le question. Le branch de quel act (quant a cest purpose) consist sur 2 parts. Per le primer, action de debt est done a le tenant pur auter vie, apres le mort de cestuy que vie, vers le tenant in demesne (que duist aver paie ceo quant ceo fuit primerment due) ses executors ou administrators. Le 2 est, And also shall distrein for the same Arrerages, upon such Lands and Tenements out of the which the said Rents or Fee Farms were issuing, in such like manner and form as he might or ought to have done, if cestuy a que vie had been alive. Et fuit object, que per un former part del act, que done distress al executors dun tenant pur vie, la le distress est done vers cestuy in que temps les arrerages incurr due, & tout auters enclaimant le terre tantsolement by or from the said Tenant, by Purchase, Gift or Descent, in mesme le manner, come le tenant pur vie purr aver fait; issint que per cest branch, cestuy in reversion ou remainder, ne serra charge pur les arrerages incurr in la vie del tenant pur vie, car cesty in reversion ou remainder, ne claim by or from him. Et in mesme cesty case al barre, laction de debt, per le primer part del dit branch est done solement

10 Co. 68. a. Lit. Rep. 93. Co. Lit. 162. b.

4 Co. 50.

solement vers le tenant que duist aver pay ceo, ses executors, ou administrators, & nemy vers cestuy en remainder, &c. Et in ceo fuit dit lestatute ad grand reason; car auterment cestuy en reversion ou remainder ne serra solement charge per lestatute pur les arrerages (si ascun serra) queux incurgent in lour temps demesne, mes auxy pur les arrerages incurr in le vie del tenant pur vie, ou in lun case ou lauter, cesty in reversion ou remainder ne fuit charge per le common ley, & le tenant pur vie poit laiser le rent pur tout son temps destre arrere, & per cest voy charger cestuy en reversion ou remainder pur tout, & le grantee en cest case poet aver son remedy vers lexecutors de tenant pur vie. Mes fuit resolve & adjudge, que cestuy en remainder in cest case per le darrein part del dit branch, serra charge; Et les Judges disoyent, que ils ne doient fair ascun interpretation encounter lexpress letter del statute: Car riens poet issint expresser le intent des fesors del act, come lour direct parols demesne, car Index animi sermo, & serra perillous a doner scope a faire construction in ascũ case encounter les express parols, quant lintent des fesors nappiert al contrarie, & quãt nul inconvenience sur ceo insuer, & pur ceo in tiels cases, à verbis legis non est recedendum. Et le several inditing & penning del former part, concernant distress done al executors, & de cest branch, argue q̃ les fesors intendont diversitie de purviews & remedies, ou auterment ils voilent aver pursue mesme les parols. Et in le principal case, tout le terre fuit charge ove le rent, & le heir tient tout son estate charge ove ceo, & quant il fist le lease pur vie, le remainder in fee, cestuy en remainder fuit chargeable, & in cest case poit aver estre distrein per le common ley pur les arrerages; mes per lact le Dieu, per le mort de C. D. fuit prevent, le quel prevention, le dit darrein part del dit branch del act ad supply & remedy in cest case, donant al grantee power al distreiss, sicome cestuy que vie avoit estre in plein vie. Et accordant a cest resolution judgment fuit enter.

Co. Lit. 162. b. 1 Vent. 92. 2 Sand. 176. Hard. 342. Palm. 433. Owen 117, 118. 10 Co. 86. a. Wing Max. 24, 25. 2 Rol. Rep. 246, 278. March 37.

Triñ

Trin. ii Jacobi,

In Communi Banco.

Whelpdale's Case.

DEbt per Whelpdale vers Whelpdale, que commence Hill. 45 Eliz. Rot. 1303. Le Pl' count sur Bill Obligatory fait per le Def. al Pl'. Le Def. plead, non est factum: Le Jury trove, que le Bill fuit un joynt Bill fait per le Def. & un auter al Pl'. Et si sur le matter le Bill mention in le count soit le fait del Def. les Jurors priont le discretion del Court. Et fuit adjudge que le Pl' recovera. Et in cest case quatuor points fuer resolve. ¶ 1. Quant deux homes sont joyntment lie en un obligation, coment que nul de eux est lie ap luy, uncore nul de eux poit dire, que le obligation nest (a) son fait, car il ad seal & deliver ceo, & chescun de eux est lie en le entier, & pur ceo si eux deux sont sue, & lun appiert, & lauter fait default, & per proces del ley il est (b) utlage, cestuy que appiert serra charge ove tout, come appiert in 40 E. 3. 36. 41 E. 3. 3. Mes in le case al barr, il puit aver plead in (c) abatement del brief, mes ne poit plead non est factum. ¶ 2. Fuit resolve que in touts cases quant le fait est voidable, & issint remain al temps de pleader (come si (d) enfant seal & deliver un fait, un home de pleine age per (e) dures) in ceux & auters semblables, le obligee ne poit pleader non est factum, car ceo est son fait al temps del action port, & covient estre avoid per special pleading, ove conclusion de Judgment si action, 1 H. 7. 15. a. b. ¶ 3. Quant un obligation ou auter escript, est per un Act de Parliament enact destre void, le party que est lye, ne poit pleader non est factum, mes in construction del ley, le fait est destre avoid per le party que est lie per ceo, per special pleading del matter, pernant advantage del Act de Parliament; car coment que le act fait lobligation ou auter escript void, uncore a ceo le ley tacite require ordre & manner, le quel lobligee doit pursue, come si lobligation soit fait al vicount encounter lestatut de

(a) 2 Rol. 709. Co. Lit. 283. a. Cr. Jac. 152. Dyer 310. pl. 89. Doctrin. placit. 260. Sav. 92. 1 Sid. 420.
(b) 1 Jones 442.
(c) 1 Sand. 291. Doct. placit. 260. 1 Sid. 420. Co. Lit. 283. a.
(d) Plowd. 66. b. 35 H. 6. 18. a. Moor 43. 2 Inst. 483. Doct. placit. 259. 14 H. 8. 28. a. 1 H. 7 15. b.
(e) 14 H. 8. 28. a. 1 H. 7. 15. b. 2 Inst. 483.
(f) Doct. placit. 259, 260, 262. Hob. 72. 14 H. 8.

de (a) 23 H. 6. c. 10. ou al un, encounter lestatute de 13 Eliz. c. 8. de Usury, in ceux & auters semblable cases, le obligor doet pleader le especial matter ove conclusion, de Judgmēt si action, & ne pleader non est factum, & ove ceo accord 7 (b) E. 4. 5. b. 7 E. 6. Br. tit. Non est factum 14. encounter le opiniō de Mountegue, Plowd. Com. in Manningham's Case. In touts cases, quant lobligation fuit un (c) foits son fait, & puis devant action port devient nul fait, ou per raser, ou addition, ou auter alteration del fait, ou per debruser del seal, in cest case comēt q̄ c̄ fuit un foits un fait, uncore le Def. poit safemēt pleader non est factum, car sans ascun question al temps del plea, q̄ est in le present temps, ceo ne fuit son fait. 36 H. 8. Dyer 59. in actiō de Debt sur obligation vers Hawood, le Def. plead non est factum, & devāt le jour de apparance del enquest, (d) soraces maung̃ le label, per q̄ le seal fuit fixe, per neligence del Clark in q̄ custody c̄ fuit; Les Justices charge les Jurors q̄ sils trove, q̄ c̄ fuit le fait le Def. al temps del plea plead, q̄ ils donent special verdict, & sic fecerunt. Mes si un fait wast & devant ascun action port, le lessee repair, & puis le lessor port action de (e) wast, laction nest maintenable, p̄ c̄ q̄ les Jurors doiēt veier le wast: Mes le Def. in m̄ le case doit pleader lespecial matter & ne poit pleader nul wast fait, car le entre est in le preterite temps, s. quod non fecit vastum, & ove ceo accord 10 Eliz. 276. Dyer. Et issint bon diversity: Et le Quære 2 Mar. Dyer (f) 112. bien resolve. Et si un obligation soit deliver al auter, al (g) oeps del obligee, & c̄ est tender a luy, & il ceo refuse, ore le delivery ad parde san force, & le obligée ne unques poit agreer a ceo apres, & pur ceo le obligor poit dire nient son fait, encounter lopinion in 1 Eliz. (h) 167. issint si obligation soit fait a feme covert, & le Baron disagrée a ceo, lobligor poit pleader non est factum, car per le refusel, le obligation perde son force, & deveigne nul fait: Et issint les disaccordant opinions in 14 H. 8. 28. a. Dive & Maningham's Case 66. 1 H. 7. 15. a. b. Dyer 1 Eliz. 167. & auters liures bien reconcile.

(a) Hob. 72, 166. 3 Co. 59. b. Br. Non est factum 14. 7 E. 4. 5. b. Styles 234. Plowd. 66. b. Doct. placit. 263. (b) 3 Co. 59. b. Br. Non est factum 14 10 Co. 100. b. Fitz. Det 80. Plow. 66. b 68. a. b. Dyer 120. pl. 8.
(c) 11 Co. 27. a. Sav. 71. Dall. 33. pl. 21. 105. pl. 50. Doct. placit. 259, 260. Cr. El. 120, 627, 800. Owen 8. 2 Bulst. 247. Dyer 112. pl. 50. 12 Co. 16. Moor 30.
(d) Doct. placit. 262. 1 Rol. Rep. 40 2 Bulstr. 247. Dyer 59. pl. 12, 13.
(e) Co. Lit. 53. a. 283. Doct. placit. 199. Dyer 276. pl. 51. 2 Rol. 682.
(f) Dyer 112. pl. 50. Doct. placit. 260.
(g) 3 Co. 26. b. Doct. placit. 260, 261. Cr. El. 54. 1 Anders. 4. Dyer 167. pl. 14, 15, &c. 2 Leon. 110, 111. N. Benl. 75. pl. 117.
(h) Dyer 167. pl. 14, 15, &c.

Mich.

Mich. ii Jacobi.

In Bank le Roy.

Long's Case.

INquisitio indentat capta apud Cossam in Com pd', quinto die Octobr, anno Regni Dnæ Eliz. Dei grac Angliæ, Franciæ, & Hibern, Reginæ, fidei defensor, &c. tricesimo sexto, corā Wilľmo Snelling coronat Dominæ Reginæ infra libertat dict' Dnæ Reginæ, villæ suæ de Cossam pdict', super visum corporis H. Long Armig ibid' existen mortui, per sacrum 12 Jurat extitit psentat; qd' quidā Henricus Danvers nuper de C. in Com E. Miles, C. D. nuper de C. pdict', in dicto Com E. Miles, G. L. nuper de Colkidge in Com W. Yeoman, &c. & R. P. nup de L. in dict' Com W. Yeoman, &c. timorem Dei præ oculis suis non habentes, sed instigatione diabolica seducti, quarto die Octobris, anno Regni dict' Dnæ Reginæ nunc tricesimo sexto supradict', inter horas undecimam & duodecimam ejusdem diei, apud Cossam pdict', in dict' Com Wilts vi & armis, viz. gladiis pugionibus, armacudiis & torment, in dict' Henricum Long, in pace Dei & dict' Dnæ Reginæ adtunc eodē 4 die Octobr, anno tricesimo sexto supradict', apud Cossam pdict' existen, insult fecerunt. Et pdictus H. D. quoddam tormentum (vocat a **Dagge**) ad valentiam vi s. viii d. cum pulvere & pellet plumbeo, anglice dict' **charged with Powder and a Bullet of Lead**, qd' idē H.D. tunc viz. dict' quarto die Octobr, anno tricesimo sexto supradict', apud Cossam pd', in manu sua dextra habuit & tenuit, in & sup ipsum Henricū Long adtunc eodē quarto die Octobris, anno tricesimo sexto supradict', apud Cossam pd', in dict' Com Wilts felonice, voluntarie, & ex malicia sua pcogitata exoneravit, anglice **did discharge**, dans eidē H. Long, adtunc apud Cossam pd', cum pellet plūbo pd', sic extra torment pd' p ipsum emisso, unum vulnus mortale, in & super anteriorem partē corporis ipsius Henrici Long, subter sinistram mamillam ipsius Henric Long, totalit penetrans in & p corpus dict' Henric Long: De quo quidē vulnere

Wilts. Indictment.

1 Bulst. 203.

vulnere mortali, idem H.L. adtunc eodē quarto die Octobr̄, anno tricesimo sexto supradicto, apud Cossam p̄d' instanter obiit. Et qd' p̄d' C.D. Miles, G.L. &c. dict' quarto die Octobr̄, anno tricesimo sexto supradicto, ac inter horas præd' ejusdem quarti diei, apud Cossam p̄d', in dict' Com̄ Wilts felonice, & ex malitiis suis p̄cogitat̄ fuerunt p̄sentes, abettantes, procurantes, comfortātes, & manutenentes dict' H.D. ad feloniā & murdrū præd' modo & forma præd' felonice faciend' & perpetrand', contra pacē dict' Dn̄æ Reginæ nunc, coron̄ & dignitat̄ suas. Et sic Jurator̄ præd', dicūt sup sacramēt suū p̄d' qd' p̄d H.D. C.D. G.L. &c. dictū H.L. eodē 4 die Octobr̄ anno tricesimo sexto supradict apud Cossam p̄d', in dict' Comitat̄ Wilts felonice, voluntarie, & ex maliciis suis præcogitat̄ felonice interfecerunt & murdraverunt, contra pacem dict' Dn̄æ Reginæ coron̄ & dignitat̄ suas. Et ulterius Juratores præd' dicunt super sacrum suū præd', qd' immediate post felon̄ & murdrum p̄d' in forma p̄d' comiss. iidem H.D. C.D. G.L. &c. fuger̄, & se retraxer̄ pro felonia & murdro p̄d'. Ac quod ipsi, aut eorū aliquis, tempore feloniæ & murdr̄ præd' in forma præd' comiss. nulla habuerunt bona aut catalla, terr̄, aut tenementa, ad noticiā Jur̄ p̄d'. In cujus rei testimoniū tā Jurator̄ præd', quā præd' Coronator, die & anno prius supradict', altnatim huic inquisitioni sigilla sua apposuer̄ & quilibet eorem apposuit. Sur quel inditement le dit H. D. fuit utlage, & port brief de Error, & divers Errors fuer̄ assigne in le indictment: Primerment, pur ceo que in le commencemēt del indictment est alledge, que lendictment fuit prise devant W. S. Coronat̄ Dn̄æ Reginæ infra libertat̄ dict' Dn̄æ Reginæ villæ suæ de Cossam præd', super visum corporis, & nest pas alledge a queux lieus le dit liberty extend (a), ne quel part, ou riens del ville de Cossam soit deins le liberty, & issint nappiert q̄ le coron̄ avoit jurisdiction in le lieu, ou le inquisition fuit prise, ne ou le murdre fuit commit, ne ou le mort corps gisoit, car tout est alledge per le indictment destr̄ al Cossam; Et indictments de felony, que sont come counts (b) & declarations le Roy vers les parties pur lour vies, covient daver certeinty expres en le record del indictment, & ne serra supply ou maintain per intendment ou argument: Car si le counts inter ptie & pties p̄ terres, ou chateux, covient dav̄ 2 choses, s. veritie & certeinty, cōe est tenus in Plowd. Com. 84.a. & 202.b. 5 E.4.21. in debt. 3 H.6.1. in forcible entry. 38 H.6.35. 9 H.6.18. pur ceo que counts sont les foundation del sute, a q̄ le pty rn̄dra, & sur q̄ le Judge adjudger̄, a fortiore indictm̄ts, principalm̄t ceux q̄ cōcern̄ le vie de hōe, & q̄ sont le coūts le Roy, a q̄ le party

1 Exception.

(a) Poph. 208. Kelw. 89. pl. 9.

(b) Cr. Jac. 588. 5 Co. 34. b. 35. a. Br. count. 54, 58, 63. 3 H. 7. 12. a. Plowden 84. a. 193. a. 202. b. 3 E. 4. 21. a. b. 38 H. 6. 1. a. 8 Co. 57. a. 2 Bulst. 77, 78. Co. Lit. 303. a. 2 Sid. 175. 4 Co. 44. b.

partie rñdera, & sur q̃ le Court adjudgera p̃ son vie,) covient daṽ plein & pcise certeintie, & ne sert̃ prise p argumēt, cōe appiert 2 E.3.31. 18 Ass. pla. 15. 29 Ass. 45. 2 E.3.28. per Scrope, 27 Ass. 73. 38 Ass. pla. 11, 12. 47 E. 3. 17. 7 H. 6. 42. 8 E. 4. 3. 3 H. 7 5. & pur ceo q̃ nest expres en le Indictment q̃ Cossam fuit deins de libertie le Cossam, & a cest cause le indictmt fuit incertein & insufficient. A q̃ fuit respond & resolve per le Court, q̃ le Indictment, nient obstant cest exception, fuit sufficient; Car voier est q̃ le rule de ley est, q̃ Indictments covient estre c̃tein: Mes sont 3 manners de certeinties, 1. al common intēt, 2. a certein intent en geñal, 3. a c̃tein intent en chescun pticuler; Le primer intent suffist en (a) barrs, q̃ sont a defender le ptie, & excuser luy; Le 2. est require en Indictmts, (b) counts, replications, &c. pur c̃ q̃ ils sont a accuser ou charger le partie; Le 3 est reject en ley, car (c) nimia subtilitas in jure reprobatur, & talis certitudo certitudinē confundit, & en cest case al bar est assets certein intendmt en geñal, q̃ Cossam est deins le libertie de Cossam, mes padventure le libertie poit extende ouster le ville, mes q̃ le ville mesm̃ sert̃ psume destre hors del libertie del ville, est un streined & captious intendmt, q̃ le ley ne allow. Et issint Sir John Popham Chief Justice dit, fuit resolve en mesm̃ le point en case de Lewes en le Countie de Sussex, & la le Indictmt fuit; Inquisitio capta apud Lewes coram Coronatore rapæ suæ de Lewes, & adjudge bon en ley. Le 2 objection fuit, que ou lindictmt fuit, quod pdictus H. D. quoddā tormentū vocat̃ a Dagge, ad valentiam vi s. viii d. cum pulvere & pelleto onerat̃, &c. in & super ipsum Henricum Long adtunc, &c. felonice, voluntarie, & ex malicia sua pcogitat̃ exoneravit, dans eidem Henr̃ Long adtunc, &c. cum pellet̃ plumbleo, &c. unum vulnus mortale super anteriorem partem corporis ipsius H. L. subter Mamillam; Fuit object q̃ cest parol (Mamillam) est pol insensible, esteant nul Latine pol, car le latine pol (sicome fuit dit) fuit (Mammilla) ove un double (m;) Et fuit dit, q̃ faux latine abatex̃ bres, & quashera indictmts, pur c̃ q̃ cesty q̃ psecute, poit pchase novel bre, & framer novel Indictments: (d) Mes auterment est de graunts & faits, car le partie ne poit aver novel q̃nt il voit. Et Hill. 28 Eliz. Vauxes Case fuit cite ou le count en lappeal fuit tenus insufficient per reason de cest parol (burgaliter) (f) ou sert̃ (burglariter) A que fuit rñde & resolve p le Court, 1. Que faux latine ne quashera Indictmt, ne abatera ascun count, car coment que original bre abatera pur faux latine, come est tenus (g) 9 H. 7. 16. b. 2 H. 4. 8. a. 44 E. 3. 18.

10 E. 3.

Le respons al 1 Objection.

(a) Doct. placit. 58. 195. Plowd. 26. a.b. 56. a. 8 Co. 57. a. 2 Bulst. 77, Co. Lit. 303. a.

(b) Cr. Jac. 588. 4 Co. 44. b. 5 Co. 34. b. 35. a. 8 Co. 57. a. Plowd. 84. a. 193. a. 202. b. Br. count. 54, 58, 63. 3 H. 7. 12. a. 3 E. 4. 21. a.b. 38 H. 6. 1. a. 2 Bulst. 77, 78. Co. Lit. 303. a. 2 Sid. 175.

(c) Wing. Max. 26. 4 Co. 5. b. 41. b. 3 Bulst. 65.

2 Objection.

(d) Cr El. 137, 231. 10 Co. 126. a. Yelv. 95.

(f) 4 Co. 39. b. 11 Co. 32. a. Cr. El. 920. Doct. placit. 84. Hales Pl. Cor. 84, 207.

(g) 8 Co. 159. b. Br. faux latin 78. 2 Vent. 173. Br. amendm. 62. Br. obligation 71. 2 Sand. 39.

Le respons al 2 Objection.

10 Edw. 3. 1. & 553. uncore judicial briefs ou fine ne serr impeach pur faux Latine, come est tenus 9 Edw. 3. 467. Mesme le ley dendictmẽt: Come si en un Indictment soit p̃fato Reginæ, ou serr præfatæ Reginæ, ou præfatæ Regi, pro p̃fato Regi, ou similia, entant que le parol est Latine & significant, & coment que ne soit congrue Latine, le indictmẽt pur tiel incongruitie ne serra quash. Mes si le parol ne soit Latine, ne parol allow per le ley, come vocabulum artis, (car chescun Art & Science ont ꝓpria vocabula artis) mes est insensible, la si c̃ soit in point material, ceo fait lendictment insufficient; come burglaria, burglariter, murdrum, felonicè, & similia, sont vocabula artis, conus al ley, & pur ceo si tiels parols ou semblable sont misprise en un Indictment, issint q̃ en lieu material un parol insensible, que nest Latine, ne ascun parol conus en ley, c̃ fait lendictment vicious & insufficient, come murdredũ pro murdrũ, ou burgariter pro burglariter, feloniter pro felonice. Mes en le case al barr fuit resolve, que Mamilla ove single (m,) est auxy bon Latine cõe Mammilla ove double (m,) cõe defamo & diffamo, definitio & diffinitio. Auxy Popham Chief Justice, Gawdy, Yelverton, & Williams teignent, que ceux parols super Mammillam fuerũt abundant & pluis que besoigne, & pur c̃ si Mammilla fuit insensible, & nul Latine, uncore c̃ ne fait lindictment vicious: Car fuit tenus per eux, que super anteriorem partem corporis fuit assets certein & sufficient, car Corpus en un indictment (que est trove per lay gents,) est destre entende del trunk del corps, inter le colle & les thighs, que est le usual & vulgar acceptation del corps. Issint fuit resolve, quod super caput, ou super faciem, ou in dexteriori parte corporis, ou in sinistra parte corporis, ou super sinistr manum, ou super dextrã manum, ou dextrum, ou sinistrum brachium, &c. ou in pectore, ou ventre, sont assets certein & sufficient: Mes super brachium, ou super manum, ou super latus, &c. sans dire dextr, ou sinistr, nest sufficient, pur ceo que in tiels cases le part de home, en que le plage est nest certein. Auter exception fuit prise, pur ceo que en le dit Indictment fuit dit, dans eidem Henrico Long, &c. unum vulnus mortale, &c. ou doit estre, unam plagam, que est le pol use en touts Indictments, & que vulnus ne serra use en Indictments, nient pluis q̃ ictus, q̃ auxy signifie un plage. Mes cest excepc̃ fuit disallow ꝑ totã Curiã, car plaga & vulnus sunt sinonima, & idẽ significant, comt q̃ plaga est le pluis usual pol en Indictmẽts. Fuit ouster except, entãt q̃ longitude * ou ꝓfunditie de cẽ plage ne fuit mre, q̃ doit estre en chesc̃ Indictmẽt de mort, a cest

10 Co. 133. a.

4 Co. 39. b.

4 Co. 39. b. 42. a.

4 Co. 42. a.

4 Co. 42. a.

Cr. Jac. 95.

3 Objection.

Le respons al 3 Objection.

* 4 Co. 42. a. Godb. 65, 66. Stanf. Cor. 79. a. 2 Inst. 318.

4 Objection.

cest cause le Inditment fuit insufficient. Mes cest exception fuit disallow per totam Curiam; car le longitude & * profundity del plage doit estre alledge, al entent que poit appearer al Court, que le plage fuit mortal, issint que ceo poit appearer destre le incheson del mort. Mes en cest case, le plage fuit penetrant tout corps, scilicet, totaliter penetrans, & per totum corpus, issint que ceo fuit apparant destre mortal, & en ascun cases les dits dimensions ne poient estre alledge, s. quant un membre, come le genu, ou le main, ou le pé, ou le chief, &c. soient abscide ou ampute, la ascun des dits dimensions ne poient estre monstre. Issint en le case al barre. Vide Trin. 28 Eliz. Heydons Case accord' ove le resolution in cest point. Auter exception fuit prise, pur ceo que lenditement fuit, dans eidem Henrico Long, &c. cum pelletto plumbeo prædict', &c. vulnus mortale, &c. totaliter penetrans in & per corpus prædicti Henrici Long: Et pur ceo que penetrans, covient de necessity dagreer ove vulnus, & nemy ove pelletto, non solement pur ceo, que vulnus est le darrein antecedent, mes pur ceo que auterment insuer incongruity: Car penetrans accord bien ove vulnus, & nemy ove pelletto; car ceo est le ablative case, & issint ne poit penetrans, car donques serra penetrante. Et fuit dit, que le plage ne penetrate ou pierce le corps, mes le pellet pierce le corps, & fait le plage: Mes non allocatur, car le sence est significant, a dire q le plage penetrate le corps, car si sert demand del profundity del plage, bien poit estre respond, q ceo penetrate le corps. Et penetro derivatur a penitus & intro. Et issint les parols sont assets significant, & sans absurdity ou incongruity, adire dans, &c. vulnus mortale totaliter penetrans in & per corpus, & eo magis esteant les parols des layes gents: Car le pellet done le plage, quel plage penetrate per tout le corps. Mes le grand objection & pluis difficult encounter le dit enditemt fuit, pur ceo q en lenditemt fault percussit: Car leffect de c, qnt a cest purpose est, prædictus H. D. quoddam tormentum, &c. cum pulvere & pelletto plumbeo onerat, &c. in & super ipsum Henric Long exoneravit, dans eidē Henrico Long adtunc & ibidem cum pellett plumbeo præd' extra torment præd' p ipsum dimiss. unum vulnus mortale, &c. Et fuit dit, q coment q percussit fault, uncore ley est tantamout, & est un rule del ley & de reason, Non refert quid ex equipollentibus fiat: Et quant appiert que H.D. torment cum pulvere & pelletto, &c. in ipsum Henricum Long exoneravit, dans

Respons al 4 Objection.
* 4 Co. 42. a. Godb. 65, 66. Stanf. Cor. 79. a. 2 In. 318.
4 Co. 42. a.
4 Co. 42. a.
Le 5 Objection.
Le respons al 5 Objection.
Le 6 Objection.
Cr. Jac. 635.

eidem Henric Long, &c. cum pelletto plumbeo prædicto, &c. unum vulnus mortale, &c. per ceo appiert al Court, que H. D. fuit le incheson del plage, & sur le matter done (en cest manner) le plage. Et fuit dit, quod percussit nest properment dit, mes quant un ove son main, ou ove ascun weapon, que il teign en son main, percute auter, & nemy quant un done un plage per un mean, come hors de torment ove un pellet, ou dun arc ove un fleche. Cest verb Percutio est derive ou compound come fuit dit a per & quatio. Mes fuit resolve per totam Curiam, que pur cest cause le Inditement fuit insufficient; Et cest part del Inditement concernant le dit objection fuit divide en deux branches, 1. Le clause devant dans eidem, &c. & le clause compernant dans eidem, &c. Et fuit resolve que le primer clause ne fuit sufficient de soy mesme, car coment que H. D. discharge le torment sur luy, uncore poit estre que il ne fuit serve per ceo; Donques le 2 clause, s. dans eidem, &c. ne poit faire ceo bon; car le clause de Dans, &c. depend sur le dit primer clause, & describe solement le plage a manifester ceo destre mortal, que doit apperer p le primer sentence dest done, quia in hoc casu participium determinat verbum: Mes icy nappiert p le primer sentẽce, q̃ la fuit ascun percussion done, & donques dans, &c. ne poit supplier c̃; car c̃ est participle dependant sur le verb precedent, & le verb precedent est, exoneravit, & oneravit poit estre sans percussion; come si un soit indite q̃ il assault un auter ove un glave en son main dextre, donant a luy un mortal plage, c̃ est insufficiẽt, pur ceo que cest participle (donant) ad nul verb devant ove que il poit participate. Et fuit dit q̃ si le 2 clause ad estre en le case al barr̃, & dedit adtunc & ibidem unum vulnus mortale, c̃ ad estr̃ insufficient; car dedit ne imply violẽt & voluntary serve, come percussit, & si dedit voit aver estr̃ sufficient, uncore dans, per totam Curiam pur le clause avãtdit, fuit insufficient. Et fuit resolve, lendite̅mt poit dire percussit aurybien sur plage done hors del torment ou ark, come ove un main. Et un president en 10 E. 4. en Bank le Roy fuit monstre, ou le serve fuit hors dun torment, & le inditement ad le parol percussit, 1 Mar. 99. Dyer, que inditement que un tiel ex malitia sua præcogitat̃ felonice murdravit, &c. nest bon sans dire percussit, pur ceo que Inditemt de Murder & Manslaughter doit aver expressement un stroke estre suppose. Et voyer est, que en touts Inditements de Murder ou Man-

Palm. 282. Cr. Jac. 635.

Cr. Jac. 635. Palm. 282. Dyer 99. pl. 63. 1 Bulstr. 144.

Manslaughter, & un serue covient estre alledge, sinon en case de poysoning; Et pur cest darrein Error le Utlagary fuit reverse, & le dit H. D. dischаrge. Et mults Presidents de Inditemts de mort, ou le plage fuit done per un pellet hors dun Torment, ou per un fleche hors dun ark, & touts ceux (queux jeo vieu) avoient cest parol percussit. 4 Co. 44. a. b.

Pasch. iii Jacobi,

In Communi Banco.

Saffyn's Case.

Cr.Jac.60,61. Lit. Rep.18. Cart.196.

EN Replegiare inter Saffyn Pl', & Adams Def. que commence Trin. 44 Reginæ Eliz. Rot. 1242. sur un especial verdict trove, le case fuit tiel; Home fait lease pur ans de certein terre, a commencer puis le fine ou determination dun term p̄ ans adonques en Esse; le primer ans determine, le second lessee ne enter, mes cestuy en reversion enter, & fait feoffment, & levy fine del terre ove ꝓclamations solonq; lestatute de 4 H. 7. c. 24. & 5 ans puis proclamac̄ passe sans entry ou claim fait per le second lessee; Et si le lessee p̄ ans fuit barre, ou nemy per le dit fine ove proclamation & le dit Act de 4 H. 7. fuit le question. Et fuit object, q̄ le lessee pur ans ne serra barre p̄ deux causes. ¶ 1. Coment q̄ le parol (a) (Interest) est deins le dit Act, uncore est destre intend de tiel interest, que le owner de ceo poit ent levier un fine; Mes cestuy que ad lease ou interest pur ans, ne poit levier un fine, mes chescun dirra encounter ceo, quod partes finis nihil habuerunt, eo que un lease pur ans nest q̄ chattel, & fine est en le realty, & le ley require que un des parties avera franktenement, & que cest parol (Interest) en le dit Act, serr̄ intend de interest dun franktenement, dont fine poit estre levy. Et fuit dit, que Mich. 21 Eliz. en Bank le Roy fuit adjudge en le Case dun (b) Saunders, que lease pur ans ne fuit interest deins le dit Act de 4 H. 7. ¶ 2. Fuit object, que coment que lessee pur ans, quant il est ouste & eject, serra deins le dit Act, uncore en cest case, lessee ne serra lie, car nul fine levy ove proclamations liera ascuns, mes ceux que sont mise hors de possession, & nont forsq; un droit, car

(a) 9 Co. 105. a.

(b) Goldsb. 171, 172. Cr.Jac.60,61. Cart. 82. 1 Leon. 99. 2 Leon. 157. Raym.149. Apres 124. b.

car si lour estate ou interest ne soit devest hors de eux, mes remain en eux, come fuit ab initio, ne besoigne a eux fait entry ou claim a cẽ q̃ ne unques fuit devest, & pur ceo est agree en Plowd. Com. 373. in Stowels Case, q̃ fine levy de terre ove proclamations, & 5 ans passe sans ascun claim fait p cestuy q̃ ad (a) common de pasture, rent, ou simil', ne liera eux, car lour estate nest devest hors del eux, mes touts foits remain en eux. Issint fuit dit en le case al barr, tanq̃ le 2 lessee enter, il nad forsq̃ interesse termini, come il avoit devant le primer term determine, le quel (come fuit dit) continue en luy, nient obstant le feoffmt ou fine: Come si home fait lease pur ans, a commencer a un future jour, & devant le jour le lessor est disseisie, uncore le lessée poit grant ouster son interest; car tiel interesse termini ne poit p disseisin ou feoffmt estre devest & mise a un droit, pluis que rent, ou common, ou similia, & ceo fuit briefment leffect de ceo que fuit dit de cest part. Mes fuit resolve, q̃ le (b) fine & proclamations, & le non-claim del 2 lessee, ad barre luy de son term p le dit Act de 4 H. 7. Et quant al primer objection fuit rnde & resolve, q̃ nient obstant q̃ lessée p ans nad tiel estate q̃ il poit fine levier, uncore non sequitur q̃ son term & interest ne serra lie & barre p le dit statute, & cẽ p deux causes. 1. Ceo est deins le letter del Act, car les parols del purview sont general (The said Fine with Proclamation shall be a final end, and conclude as well privy as estrangers to the same) queux parols sont general, & extend a touts; Et les parols del saving sont (such right, claim and interest, &c. & cestuy q̃ ad term p ans ad interest, & ove cẽ accord (c) Catlyn in Plo. Com. 373. 2. Ceo est deins le mischief, car appiert p le preamble, that (d) Fines ought to be of greater strength to avoid Strifes and Debates, and to the final end and conclusion, &c. Et grand mischief, trouble, & vexation ensuet si leases p ans (q̃ ore sont faits p grand nombre des ans, ascun foits absolute, ascun foits determinable p vies) ne serra deins le dit Act. Et p cẽ fuit resolve, q̃ les interests de tenant p Statute merchant, (e) Statute staple, (f) Elegit, gardein p chivalry, executors q̃ ont terre tanq̃ dets & legacies sont paies, & chescun auter tiel interest sont deins le dit Act de 4 H. 7. car touts ceux avoient interest en la terre, & cestuy q̃ ad un naked droit ou title a ascun inheritance ou franktenement, ne poit levier fine a ascun estrange, mes serra dit, quod partes finis nihil habuerunt, & uncore il serra lie per fine levie per le terre tenant: Issint coment que lessée pur ans ne poit levier fine a ascun estrange, mes

(a) Cr. Jac. 60. Raym. 149.

(b) 1 Sid. 459. Cr. Jac. 60, 61. Cart. 82. 1 Vent. 56. 2 Inst. 517. 9 Co. 105. a. 2 Rol. Rep. 402, 405. 3 Keb. 288. Plowd. 374. a. Noy 23. Hard. 400, 413. Co. Lit. 262. a.

(c) Plowd. 374. a.

(d) 9 Co. 105. a.

(e) 2 Inst. 517. Plowd. 374. a. Mod. Rep. 217.

mes serra dit, quod partes finis nihil habuerunt, uncore non sequitur, mes q̃ il serr̃ lie ꝑ le fine levy ove proclamation per le terre tenant. Quant al second objection fuit rñde & resolve ꝑ le Court, q̃ en le case al barr̃ ꝑ le dit feoffmt̃, le second lessée navoit forsqz droit, car quñt son future interest ad commẽcemt̃, donqs il ad tiel present estate en la terre, q̃ poit estre devest, & q̃ il poit reveste ꝑ entry: Come si home fait lease pur ans, en cest case devant q̃ le lessée enter, il ad estate ꝓ ans en la terre, q̃ il poit (a) grant. Et les parols de Litt. fuer̃ bien observe, Lib. 1. cap. 7. fol. 13. b. si home fait lease pur ans, & devant q̃ le lessee enter, le lessor morust, uncore le lessee poit (b) enter, pur ceo q̃ le lessée per force del lease ad droit maintenant daver les tenemts solonqz la form del lease: Et Lib. 3. cap. 8. fol. 107. si home lessa son terre pur ans, si le lessor release al lessée tout son droit devant q̃ le lessée avoit enter en la terr̃, tiel (c) release est void, ꝓ c̃ q̃ le lessée navoit possession en la terr̃ al temps de release fait, mes tantsolemt un drt daver m̃ la terr̃ ꝑ force de m̃ la lease. Et eodem Lib. fol. 127. si hõe lessa tenemts a term dans, ꝑ force de quel lease le lessée est seisie, (i. possesse) & puis le lessor ꝑ son fait grant le reversion a un auter ꝓ vie, &c. il covient en tiel case, q̃ tenant pur term dans (d) attorner; Per queux appiert, q̃ devant q̃ le lessée enter, il nad actuel possession, ne (come semble) le lessor nad tiel reversion q̃ il poit granter ceo ꝑ nosme del (e) reversion ouster, mes uncore tiel lessee ad pluis q̃ cestuy q̃ ad future interest; car il poit enter maintenant, & prender les profits, issint q̃ son interest accompany ove present entry & ability a prender les profits, quel il poit transferre al auter, poit estre devest hors de luy, & mise a un mere droit nient grantable. Et issint le diversity appiert inter le case al barre, & (f) Sanders Case, q̃ fuit adjudge en 21 Eliz. car la al temps del fine levy, le lessee nad power de enter ou a prender les profits, mes solemt un future interest, quel (si poit estre devest) il navoit ascun possible mean a revester ceo.

(a) Cr. Jac. 60. Cr. El. 15, 127.

(b) Lit. sect. 66. Co. Lit. 51. b.

(c) Lit. Sect. 459. Hetley 81. Co. Lit. 46. b. 270. a. Lit. 108. b. Perk. Sect. 603.

(d) Co. Lit. 315. b. Lit. Sect. 567. Lit. 128. b.

(e) Cr. Car. 110, 400. Cr. Jac. 604. Godb. 451. 10 Co. 107. b.

(f) Golds. 171, 172. Cr. Jac. 60, 61. Cart. 82. 2 Leon. 157. 1 Leon. 99.

Pasch.

Pasch. iii Jacobi.

De Libellis Famosis.

IN le Case de L. P. en le Star-Chamber en mesme cesty Term, vers que Lattorney le Roy proceed sur son confession demesne ore tenus, pur composer & publier dun infamous Libel en meeter; Per que John Archevesque de Canterbury (que fuit un Prelate de singular piety, gravity, & science ore mort,) per discriptions, & circumlocution, & nient en expres terms; Et Rich. Evesq; de Canterbury que ore est, fuer traduce & scandalize: En quel case case ceux points fueront resolve. ¶ 1. Chescun Libel (que est appelle famosus Libellus, seu infamatoria scriptura) est fait, ou vers un private home, ou vers un Magistrate ou publiq; person; sil soit fait vers un private pson, ceo deserve un severe punishment; Car coment q; le Libel soit fait versun, uncore il incite touts ceux de mesm le familie, kindred, ou society a revenge, & issint tende per consequens al quarrels, & breach del peace & poit estre le cause de effusion de sank, & de grand inconvenience. Si soit vs un Magistrate, ou auter publiq; pson, il est greinder offence; Car il concern non solemt le breach del peace, mes le scandal del governmt; Car q̃l greinder scandal del governmt poit estre, q̃ daver corrupt ou wicked Magistrates destre appoint & constitute per le Roy, a governer les subjects desouth luy? & greinder imputation a le state ne poit estre q̃ a permitter tiels corrupt homes a seer en le sacred seat de Justice, ou daver ascun medling, en, ou concernant ladministration de justice. ¶ 2. Coment que le private home ou Magistrate soit mort al temps del fesant del Libel, uncore il est punishable; car en lun case ceo incite auters de mesme le familie, sank ou societie a revenge & a infreinder le peace, & en lauter, le Libeller traduce & slander le state & governmt q̃ ne mourust pas. ¶ 3. Un Libeller q̃ est appell' (famosus defamator) serra punie ou per indictment al common ley, ou p bill', sil denie il, ou ore tenus sur son confes-

3 Inst. 174. 9 Co. 53. b. Moor 813, 627. March sur slander 131, 132.

3 Inst. 174.

confession, en le Star Chamber, & solonq; le qualitie de son offence il poit estre punie p fine ou imprisonmẽt, & si le case soit exorbitant, per pillorie, & perde de ses Aures. ¶ 4. Non refert si le libel soit voier, ou si le ptie vers que ceo est fait soit de
Hob. 253. bon fame, ou de male fame; Car en un setled state de government le ptie grieve doit complain pur chescun injurie fait a luy en ordinarie course del ley, & nemy per ascun mean a revenger luy mesme, ou per le odious course de libelling, ou autermen. Cesty q̃ tua ascun home ove son espée en combate, est grand offendor; mes greinder offendor est celuy q̃ poyson un auter, car en lun case cesty q̃ est apertmẽt assault poit luy mesm̃ defender, & scavoit son adversarie, & poit indeavour a pventer ceo; Mes poysoning poit estre fait cy secretmẽt, q̃ nul poit defender luy mesme encounter ceo, p q̃l cause loffence est le pluis dangerous pur ceo que loffendor ne poet facilmẽt estre conus: Et de tiel nature est Libelling, ceo est secret, & despoil home de son fame (que doit estre pluis pcious a luy q̃ son vie) & difficilimũ est invenire Authorem infamatoriæ scripturæ, & pur ceo quant loffendor est conus, doit estre severement punie. Chescun infamous Libel, aut est in scriptis, aut sine scriptis. Scandalous Libel in scriptis est, quant un Epigram, Rime, ou auter
3 Inst. 174. 9 Co. 59. b. escript est compose ou publie al note ou contumelie dun auter, per que son fame ou dignitie poit estre prejudice; Et tiel libel poit estre publie, 1. Verbis aut cantilenis; Come ou ceo est maliciousmẽt repeat ou chante en le psence des auters. 2. Traditione; Quant le Libel ou ascun copie de ceo est deliver ouster a scandalizer le partie. Famosus Libellus sine scriptis poit estre; Primermẽt Picturis, come a painter le partie en ascun shameful & ignominious manner. 2. Signis, come a fixer Gallows, ou auters reprochful & ignominious signes al huise del partie, ou aylors. Et fuit resolve Mich. 43 & 44 Eliz. en le Star-Chamber in Halliwoods Case; Que si ascun trove un Libel (& voit preserve luy mesme hors del danger) si ceo soit compose vers un private home, le trover ou poit arser ceo, ou maintenant
Hob. 253. 9 Co. 59. b. a deliver ceo a un Magistrate; Mes si ceo concern un Magistrate, ou auter publique person, le trover covient maintenant a deliver ceo a un Magistrate, al entent que per examination & industrie, le Authour poit estre trove & punie. Et libelling & calumniation est offence encounter le ley de Dieu; car *Leviticus* 17. Non fac calumniam pximo. *Exodus* 22 *vers.* 28. Principi populi tui non maledices. *Ecclesiastices* 10. In cogitatione tua

tua ne detrahas Regi, nec in secreto cubiculi tui diviti maledices, quia volucres cœli portabunt vocem tuam, & qui habet pennas annunciabit sententiam, Psal. 68. 13. Adversùs me loquebantur qui sedebant in porta; & in me psallebant qui bibebant vinum, Job 30. vers. 7. & 8. Filii stultorum & ignobilium, & in terra penitus non parentes, nunc in eorum canticum vers. sum, & factus sum eis in proverbium. Et fuit observe que Job, que fuit le mirrour de patience, come appiert per ses intemperate parols, devient quodammodo impatient quant Libels fuer faits de luy, & pur ceo appiert come forcible ceo est a provoker impatience & contention. Et sont certein notes, per queux un Libellor poit estre conus; Quia tria sequuntur defamatorem famosum. 1. Pravitatis incrementum, increase de lewdnes. 2. Bursæ decrementum, evacuation del burse & beggerie. 3. Consciencia detrimentum, shipwrack de conscience.

Paschæ

Paſchæ iii Jacobi.

In Bank le Roy.

Palmer's Caſe.

(a) Cr. Jac. 66. Yelv. 59. 6 Co. 70. b.

ENter Palmer (a) & Wilder (pur un gard en le Countie de Oxoñ) le ſole q̃ſtion en le caſe fuit; Si le Gardein en chivalry avera le ſingle value del heir ſans aſcun tender? Et fuit object que le gardein navera ceo ſans tender pur 4 cauſes. 1. Lit. Lib. 2. cap. 4. f. 21. & touts les liures agréeont, que ſervice de Chivalrie treit a luy garde, marriage, & relief; & le ſtatute de Merton, (b) cap. 7. dit, Quod maritagium ejus qui infra ætatem eſt de mero jure pertinet ad dominum feodi, iſſint q̃ le marriage del heir deins age appent per la ley en tiel caſe al Seigniour, donques ſi le heir voile perform ceo que la ley require, s. deſtre marrie p ſon gardein, neſt reaſon que il rendra aſcun value pur ceo; Car Littleton ne dit, que ſervice de chivaler treit a luy le value del marriage, mes le marriage meſme, & le ſtatute de Merton ne dit, Quod valor maritagii ejus de mero jure pertinet ad Dñm feodi; ſed maritagium ejus de mero jure pertinet, &c. Mittomus donq̃s que A. covenant ove B. que B. avera le marriage de A. & q̃ il ſerra marrie a ceſty que B. voile nominate a luy, en ceſt caſe ſi A. ſoit priſt deſtre marrie according a ſon covenant, & B. ne voile nominate aſcun, il ne unques rendra aſcun value pur ceo, iſſint en le caſe al barr, entant que le ley done al Seigniour le marriage, ſi le heir ſoit priſt a performer ceo, il eſt excuſe & ne ſerra charge ove aſcun value. Iſſint ſi le tenant ſoit priſt a faire homage, ou aſcun auter corporal ſervice, que per ſon tenure il doit faire, le Seigniour ne poyt refuſe, ou waive ceo, & prender amends pur ceo. 2. En ceſt caſe

(b) 2 Inſt. 92, 93, &c. Cr. El. 469.

del marrpage q̃ le lep done, le Seignior est dað le benefit, & il doit fair le primer act, car le heir ne poit perform le duty q̃ le lep en tiel case require sans primer act fait p le Seigniour, s. tender dun feme que le heir espousef, & en touts cases quant default est en cesty que doit fair le primer act, lauter partie est excuse; Come si home soit lie a levier (a) fine al obligée devant tiel jour, en cest case entant q̃ per le lep lobligée doit fair le primer act, cestascavoir, a suer un bře de Covenant devant le jour, si nul bře de Covenant soit sue, lobligor est excuse come est tenus 4 E.3.39.b. 18 E.3 27.b. & 11 H.4.18.a. Vide 21 E.4.2. 2 E.4.3,4. 20 Eliz. f.361. Dyer, Windsor's Case, & 22 Eliz. 371. Dyer, &c. 3. Les Parols del bře de Valore maritagii sont; Quare cum (b) maritagiũ p̃dict' B. ad ipsũ A. ptineat, eo quod p̃dict' terrã suã de eo tenuit p servitiũ militare, & idem A. p̃dict' B. dum fuit infra ætatem in custodia sua, competens maritagium absq; disparagatione, &c. sæpius obtulerit, idem B. maritagium illud renuens de eodem maritagio præfať A. cum ad plenam ætatem pervenerit satisfacere recusavit, & adhuc recusat minus juste, &c. ad dampnum, &c. per quel brief, & auxy per le bře de Intrusion de garde appiert que le Seigniour navera le value sans tender de marriage, & default en le heir; & si le tender en tiel case ne serť requisite, graund & tedious surplusage serra contein en le bře. que de son nature & solonq son nosme doit estre brief & substancial, Dicitur enim bře, quia rem breviter enarrat. 4 Sur les reasons avantdit sont divers expres authorities en le point, 21 E.4.43.a. per totam Curiam, que covient estre tender, F. N. B. 141. (c) 40 E.3.6.b. issue prist sur le tender, 11 H.4.82. tender alledge, (d) 43 E.3.20. & lestatute de Merton cap.7. Si quis hæres, &c pro Dño suo noluerit maritare, non compellatur hoc facere, sed cum ad ætatem pervenerit det Dño suo & satisfaciat ei, &c. queux touts prove q̃ la covient estre tender. Quant al 1 & 2 Objections fuit resolve (e) p totã Curiã, que al common lep fuit al election del Seigniour daver le Marriage del heir, ou a permitter le heir a marrper ou lup pleist, & daver recompense, s. le value de ceo, & que al common lep non solement le brief de Valore maritagii gist, mes auxy le Quare se intrusit maritagio non satisfacto, & ove ceo accord, (f) 31 Lib. Ass. pla. 26. Et al common lep si le heir deyns age avoit estre ravie & marrie, le gardein recovera en Action de Trespas le value de marrpage tout en damages, & ove ceo accord 29 E.3.37. & 29 Ass. pl. quel est un nota-

(a) 1 Rol. 458. Hutt. 48. Winch 29. 8 E.4.2.b.21.b.

(b) Dyer 361. pl 9. F. N. B. 141. D.

(c) Fitz. Action sur le Statute 9. Br. forfeiture de Marriage 3.

(d) Fitz. Action sur le Statute 11. Br. forfeiture de Marriage 5.

Le Resolution del Court.

(e) 6 Co. 70.b. Cr. Jac. 66, 151.

(f) Br. forfeiture de Marriage 7. Br. tender 44.

notable proof, que le value del marriage appent al gardein sans tender (a) car si le value ne serra due sans tender, donques si le ravisher dun garde luy marrie, le Seignior ne recovera le value, ou si le heir marrie luy mesme devant que le Seigniour poit fair tender, ou il fua (b) ouster le mere, ou al lieus disconus, lact & tort del heir si tender fuit de necessity poit preventer le gardein del benefit del marriage, que de (c) mero jure perteign a luy, que serra enconvenient. Quant al 3 Exception fuit rnde, que plusors foits brēs sōt frame solonqz ceo que pluis usualmt eschie; Et ou le rule est, ad (d) ea quæ frequentius accidunt jura adaptant, poit estr̄ bien dit, ad ea quæ frequentius accidunt rescripta sive bria adaptant, & special case avera usual brē, & special count. Quant al authorities, s. de 40 E. 3. 6. b. la appiert que issue fuit prise sur le tender, que plusors foits est fait per bon advise, s. primes a trier le matter en fact, si le councel del Plaintiff voile ceo admitter, & donques a prender ladvantage del matter en ley, quel joynder del issue p le councel del Pl' nest ascun authoritie de prover que tendr̄ est requisite. Et quant al livre de (f) 21 E. 4. 43. a. que nest que un opinion obiter, sans argument ou deliberation, in le debating dun auter case est destre intende del forfeiture del marriage, Et en les auters livres, tender est forsqz alledge & nul authoritie que ceo est requisite; Mes le livre de (g) 31 Ass. pl. 26. est adjudge que pur le single value tender nest requisite, & ove ceo accord 2 H. 7. 9. a. Et hoc commun Jurisperitorum calculo comprobatur; Et issint le doubt en 9 Eliz. Dyer 255. (h) bien resolve.

(a) Cr. El. 335, 468, 469. Yelv. 59. Moor 22, 65, 593. Co. Lit. 82. a. 6 Co. 70. b. 71. a. 2 Inst. 93. Cr. Jac. 66. Cr. Car. 103, 503.
(b) Yelv. 59. 6 Co. 71. b. Cr. Jac. 151.
(c) Cr. Jac. 66, 151. Yelv. 59 6 Co. 71. b. Cr. El. 468.
(d) 6 Co. 77. a. 7 Co. 28. a. Calvins Case. Co. Lit. 238. a. 2 Inst. 137. Cart 13.
(e) Devant 127. a. Fitz. Action sur le Statute 9. Br. forfeiture de Marriage 3.
(f) Devant 127. a.
(g) Devant 127. a. Br. forfeiture de Marriage 7. Br. tender 44.
(h) Dyer 255. pl. 6. Doct. placit. 94.

FINIS.